POLITICAL THEORY

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LUCKNOW
THE UPPER INDIA PUBLISHING HOUSE LIMITED

FIRST EDITION 1936

PRINTED AT INDUSTRIAL ART PRINTERY, KANPUR

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THE NATURE, SCOPE AND METHODS OF POLITICAL SCIENCE

POLITICAL SCIENCE is a science which deals with State and Government. In its classical form, western political thought had its origin in the city-states of ancient Greece. The Oriental peoples had speculated on the State and its problems even before the time of the Greeks. But they did not develop political science in its pure and systematic form. It was mixed up with a great deal of mythology and superstition. Religion and politics were so closely intertwined that no attempt was made to develop an independent science of politics. The social sciences were treated as a branch of theology. The task of separating politics from religion, superstition, and mythology first fell to the lot of the Greeks. Thus it was that the Greeks were the first people to develop political science in its pure and systematic form. They were eminently fitted for this task by the rational and social outlook which characterised all their thinking.

Early Hindu thought has much to say on kingship, village republics, organisation of Government, and the duties of rulers and subjects. All of this, however, does not produce a comprehensive political theory. Confucius of China and Kautilya of India seem to have been more concerned with the art of government than with the theory of the State.

TERMINOLOGY

A difficulty which confronts us at the very outset in undertaking a study of political science concerns the precise meaning of such terms as Politics, Political Science and Comparative Governments. We cannot hope to go very far in understanding problems pertaining to the State unless we make clear to ourselves what these terms mean. Although political science has its roots in the Greek past, it is in its modern form a comparatively new science. Consequently, it has not yet acquired a definite terminology of its own. In France and Germany, however, it seems to have attained a greater degree of perfection than in the Anglo-Saxon countries.

1. Politics

Earlier writers on the subject simply use the term Politics in describing the entire science of the State. Aristotle's celebrated treatise has for its title the simple name *Politics*. The term Politics is derived from the Greek words *Polis* or 'City State' and *Politeia*. In the view of the Greeks, Politics embraces everything that touches the life of the State. Used in that sense it is the equivalent of Political Science. Writers of an earlier generation like Jellinek, Holtzendorff, and Sidgwick prefer the term Politics to Political Science which is in current use to-day. Among modern writers there is a distinct aversion to using the term Politics in its wide sense to cover a study of the phenomena relating to the State and Government. Politics, as ordinarily used to-day, refers either :

(1) To practical politics, as meaning 'the art of controlling a party and securing the nomination and election or the appointment of particular persons to office' or

(2) To the art of Government, the art of directing or guiding the policy of the Government towards a particular goal.

Sir Frederick Pollock, using the term Politics in its broad sense, divides it into Theoretical Politics and Practical or Applied Politics. Under the first head he includes :

(*a*) Theory of the State,
(*b*) Theory of Government.
(*c*) Theory of Legislation, and
(*d*) Theory of the State as an artificial person.

Under the second division he includes :

(*a*) The State (actual forms of Government),
(*b*) Government (the working of Government, Administration, etc.),
(*c*) Laws and Legislation (Procedure, Courts, etc.), and
(*d*) The State personified (Diplomacy, Peace, War, and International dealings).

Sir Ernest Benn humorously defines politics as 'the art of looking for trouble, finding it whether it exists or not, diagnosing it wrongly, and applying the wrong remedy'.

Theoretical politics deals with the basic problems of the State, without concerning itself with the activities of any particular Government or the means by which the ends of any particular State are attained. Practical politics, on the other hand, deals with the actual way in which Governments work out the various institutions com-

prising political life (*28 : 2*). It will no doubt be generally agreed that this is both a useful and convenient distinction, but many would prefer the term Political Science to Politics in the present context.

2. Political Science

The term Political Science in its current usage is much more comprehensive than the term Politics. It connotes the whole range of knowledge regarding the State and embraces the theory of the State. It includes both Theoretical Politics and Practical or Applied Politics. On the theoretical side, it is concerned with questions like the nature, origin, purpose and justification of the State and is known as the Theory of the State or Political Philosophy. On the practical side, it is concerned with the structure, functions, and forms of political institutions, and is known as Comparative Politics or Constitutional Government. A succinct definition of Political Science is given by Paul Janet, a distinguished French writer, who says that Political Science is 'that part of social science which treats of the foundations of the State and the principles of Government'. According to Gettell, Political Science is 'a historical investigation of what the State has been, an analytical study of what the State is, and a politico-ethical discussion of what the State should be (*24 : 4*).'

3. Political Philosophy

Political Philosophy is another term which gives rise to confused thinking in studying the phenomenon of the State. To some English political thinkers, political philosophy is the major portion of political science, political philosophy being that part of philosophy which deals with the State which is a part of the universe with which philosophy proper is concerned. This view evolves from the belief that philosophy, being the unifier of all knowledge, should regard the study of the State as one of its sub-divisions. We differ from this point of view, because the modern age of specialisation calls not so much for a synthesis of all knowledge as for an analysis of it. Progress in political thinking, just as much as in other fields of thought, calls for specialisation and delimitation of the various fields.

In his *Main Currents in Modern Political Thought*, J. H. Hallowell rightly says that political philosophy is not concerned so much with political institutions as with the ideas and aspirations that are embodied in institutions. In his own words, 'It is not so much interested in how things occur as it is in what occurs and why (*31*).'

The distinction between political science (Staatwissenschaft) and political theory or political philosophy(Staatslehre or Staatsphiloso-

phie) is generally observed by Continental writers, though it is difficult to point to the exact line of demarcation. Political Science, as we use the term to-day, is broader in scope than political philosophy and carries with it a greater precision of meaning. 'Political Philosophy deals with the fundamental problems of the nature of the State, citizenship, questions of duty and right, and political ideals (*28 : 31*).' 'It is in a sense prior to political science, for the fundamental assumptions of the former are a basis to the latter (*28 : 31*).' Never the less, if Political Philosophy is not to become vague and imaginative, it must use the material supplied by Political Science. Political Theory and objective political conditions act and react upon one another.

4. Theory of the State

This term is in many ways preferable to the term political philosophy, although the subject matter of both is much the same. Political philosophy tends to suggest something abstract and speculative, but the theory of the State, or Political Theory, is much clear and its boundaries are better marked. It is not a study of the structure of the forms of government nor a comparison of the various forms of government. These are dealt with in that branch of Political Science known as Comparative Government. The theory of the State, likewise, is not a study of the historical development of the State or of law. Nor is it an attempt to discover the ideal State. Neither is it a study of the art of governing or of administration. It no doubt presupposes some knowledge of all these things as a necessary pre-requisite. But it is not concerned with the structure and activities of any one State. It deals with the essentials of the State and is based upon a study of the State both as it is and as it has been.

Value of Political Thought

There is a disposition in some quarters to-day to minimise the value of a study of political theory as being an abstract and a barren subject. This under-estimation comes about largely because of the habit of laughing at all theory, a habit which seems to be a feature of the matter-of-fact, mechanical, and industrialised society of to-day. We agree with Mr. Ivor Brown when he says, 'Sensibly handled with a common-sense attitude to the real value of social life, it (political theory) is both a concrete and a fruitful study.'

In his *History of Political Thought*, Prof. Gettell carefully sums up the arguments for and against a study of political thought, which we

shall state as briefly as possible. It is often said that political theory has little relation to reality, that it cannot be applied in practice, that it deals with legal fictions and absolute concepts, that it is inexact, that it is incapable of giving definite answers to disputed questions, and that it is sometimes disastrous to actual politics. The opponents of political theory might very well use the aphorism of Emerson that there is 'nothing new, nothing true and nothing matters'.

To counteract the above charges, certain values of a study of political theory may be enumerated. It gives precision and definiteness to the meaning of political terms. It is conducive to clarity and honesty of thought. It is an aid to the interpretation of history. A knowledge of past political thought is an invaluable help in understanding present-day politics and international relations. Constructive political progress rests upon a sound and comprehensive political theory, applicable to present-day conditions and needs. Political thought represents a high type of intellectual achievement. Finally, if government can be shaped and improved by human ingenuity; no study is more valuable than a study of political theory. Political theory is thus intensely practical and intensely important. It is the abstract treatment of a concrete subject.

The charge that political theory is too far removed from actual conditions is not true. We need accurate definition and close analysis. Wise statesmanship requires more than mere hazy and often conflicting intuitions. It requires a sound philosophy, a scheme of moral values, and that is exactly what political theory endeavours to give. Statesmanship is essentially a moral task. That some political theorists have been mere pedants is no reason for condemning political theory wholesale. By its very nature political theory cannot always give us clear-cut answers. While it may not lead to unity in political discussion, it will be at least an aid to mutual respect and toleration. If it is true that where there is practice, there should be theory also, a study of political theory is invaluable to political practice.

Scope of Political Science

Prof. Goodnow claims that political science divides itself into three istinct parts, *viz.*

(1) The expression of the State will;

(2) The content of the State will as expressed; and

(3) The execution of the State will.

'The first division includes political theory and the network of extra-legal customs and extra-legal organisations which influence the political system of a country. The second is, in effect, a synonym for law. The third deals with the ascertainment and application of the correct principles of administration.

Suffice it to say that Prof. Goodnow conceives the scope of political science rather narrowly. His description does not seem to include such questions as the nature and characteristics of the State and the relation between authority and obligation.

RELATION OF POLITICAL SCIENCE TO ALLIED SCIENCES

Political science does not stand alone, since it is not the only science which concerns itself with men in organised society. Being one of the many sciences dealing with relations of man to man, it has its close connections with other social sciences. Thus Paul Janet remarks that political science is 'closely connected with political economy or the science of wealth; with law, either natural or positive, which occupies itself principally with the relations of citizens to one another; with history, which furnishes the facts of which it had need; with philosophy, and especially with morals, which gives to it a part of its principles (*23 : 29*).'

1. Political Science and History

These two sciences are very intimately connected. As Seeley puts it: 'History without political science has no fruit. Political science without history has no root.' To quote the same writer again: 'Politics are vulgar when not liberalised by history, and history fades into mere literature when it loses sight of its relation to politics.' History provides the raw material for political science. According to Seeley, political science and history will ultimately become identical with one another. But this seems improbable, if not impossible. Though both sciences are interdependent and mutually complementary, there are some fundamental differences between them.

(*a*) *In Their Method of Treatment*. History, being narrative, deals with facts in their chronological order, whereas political science selects only such events as relate to political evolution. The method of political science is reflective. Using the material provided by history, it seeks to discover general laws and principles.

(*b*) *In Scope*. History is more comprehensive because it deals with the economic, religious, and military aspects of the social life, whereas

political science is not interested in them except in so far as they throw some light on the nature of the State and the development of political control.

(c) *In Their End.* History is much less philosophical than political science. History deals with concrete facts and political science deals with ideals and abstract types. Political Science deals with the state as it ought to be ; history deals with the State as it is and has been.

The conclusion, then, is that Political Science must make use of history only to transcend it. The historian's task is not to pass moral judgments, but the political scientist is bound to make such judgments. It is there that political science joins hands with ethics and parts company with economics and sociology.

Lord Bryce claims that 'political science stands midway between history and politics, between the past and the present. It has drawn its materials from the one, it has to apply them to the other.'

2. Political Science and Economics

Political science and economics are very closely related. They exert considerable influence on each other and cover a common ground to a large extent. Production and distribution of wealth are affected by the regulations of the State. All economic activity is carried on within the State on conditions laid down by the State through laws. Political movements, on the other hand, are profoundly influenced by economic causes. Our economic life is conditioned by political institutions and ideas. Some of the important questions of present day politics are at the same time questions which vitally concern economics ; *e.g.*, questions relating to tariff laws, labour legislation, and government ownership. The relation between the two sciences is so great that a century ago scientific writers regarded economics as a branch of political science, and the subject itself was described as political economy. As late as the eighteenth century, politica economy was regarded as 'a branch of statesmanship'.

Although the two sciences are closely related, there are still some fundamental differences between them. Commenting upon the question, Ivor Brown remarks that economics is concerned with things, while political science is concerned with people ; one deals with prices and the other with values. If economics is concerned with people, it is not with people as ends in themselves, but only in relation to the things they make, sell, and use. Political science also takes things into account, but this it does only in relation to human or moral values. Thus it is that political science easily becomes a normative science while,

economics remains a descriptive science. As some one has humorously remarked, an economist is one who knows the price of everything but the value of nothing.

It is a welcome sign of the times that economics is becoming more and more a normative science, concerning itself not merely with the production of wealth, but also with its just distribution.

3. Political Science and Sociology

What philosophy is to the mental sciences, sociology is to the social sciences. Both of them aim at a unification of the subject matter which belongs to the several allied subjects. Thus both possess an all-embracing character. Political science is narrower than sociology and is, in a general sense, a sub-division of sociology. Sociology is the fundamental social science. The field covered by sociology is so vast that present-day writers prefer to limit it to the study of certain phases of the life of society, other than for its political aspects.

(*a*) Sociology in its widest significance denotes a study of society in all its manifestations, whereas political science is only a study of the State and Government. Putting the same thought in other words, we may say that while sociology deals with man in all his social relations, political science deals with man in his political relations alone. This may not be true of the State in its early stages but it is emphatically true of the modern State. In its early stages, the State was more a social than a political institution. In the words of Gilchrist, 'Sociology is the science of society; political science is the science of the State, or political society. Sociology studies man as a social being, and as political organisation is a special kind of social organisation, Political Science is a more specialised science than Sociology.' Or, as Kranenburg puts it, 'while sociology examines the formation and operation of groups as such, political theory focuses its attention on a special group, namely the State.'

(*b*) Sociology deals not only with organised communities but also with unorganised communities. The concern of political science is only the former. It deals only with societies which have received the impress of political organisation. Thus it is later in origin than sociology.

(*c*) Sociology deals with the legal and coercive relationships of man with his fellows as well as with the evolution of customs, manners, religion, and economic life. Political science deals only with the former.

(*d*) Unlike political science which treats only of the conscious

activities of man, sociology treats of unconscious social activities as well.

(*e*) Political science starts with the assumption that man is a political being. Sociology goes behind this assumption and seeks to explain how and why man became a political animal.

(*f*) Sociology is concerned with what has happened or does happen, and not with what ought to happen. Political science, at least in one of its aspects, is concerned with what ought to be done*.

4. Political Science and Ethics

Political science is the science of the political order and ethics is the science of the moral order. Both have to deal with questions of right and wrong. The relation between the two is so close that Plato considered politics a sub-division of ethics. The State, he believed, should train men in a life of virtue. The capital advance made by Aristotle upon Plato is said to be his separation of ethics and politics. But this separation turns out to be one of methodology rather than of substance. Aristotle, too, posits a close relation between ethics and politics and allows political questions to be influenced by man's highest moral judgment. The end of the state is, according to him, good life or a community of well-being. Machiavelli is the first writer of any note in the western world sharply to separate politics from ethics. To him, religion and morality are not the masters of the State, not even safe guides, but useful servants and agents.

The modern view is, on the whole, in favour of maintaining a close relation between ethics and political science†. Lord Acton goes so far as to say: 'The great question is to discover, not what Governments prescribe, but what they ought to prescribe.' Another writer holds that to separate ethics and politics is disastrous to both. Politics divorced from ethics rests on a foundation of shifting sand; ethics divorced from politics is narrow and abstract. Ivor Brown maintains that the difference between politics and ethics is one of quantity, not of quality; for 'politics is but ethics writ large'. He goes on to say: 'Ethical theory is incomplete without political theory, because man is

* Taking the opposite point of view, Heymans, quoted by Kranenburg, writes: 'The objection that sociology can offer us nothing but bare facts, instead of ideals, and uniformities instead of values, can be answered in a single sentence: "Not so; the ideals in fact live and act uniformly within us." '

† According to Foy, if a thing is morally wrong it can never be politically right.

an associated creature and cannot live fully in isolation; political theory is idle without ethical theory, because its study and its results depend fundamentally on our scheme of moral values, our conceptions of right and wrong.'

A lasting contribution of Mahatma Gandhi to politics is his insistence upon the spiritualisation of politics, *i.e.*, the application of such spiritual and moral principles as truth, love, non-violence, non-attachment, and self-suffering to man's social life.

The ultimate justification of the State is determined by the moral end or purpose which the State serves. Thus the ideals of both ethics and political science must be in agreement. Yet the bulk of the material with which the two sciences deal is distinct. Catlin contends that from ethics the statesmen may learn which courses among several are desirable and from political science he may learn which among several may be feasible.

5. Political Science and Psychology

Psychology, as we know it to-day, is a comparatively new science and its advocates are trying to apply psychological methods to every part of man's individual and social life. E. Barker aptly remarks: 'The application of the psychological clue to the riddles of human activity has indeed become the fashion of the day. If our fathers thought biologically, we think psychologically.' There can be little doubt that the psychological approach to politics upon which much insistence is placed these days, is very valuable. It may be that politics has been too long under the sway of philosophy and has not given enough attention to the facts of human behaviour. We need 'to reinvigorate our minds from the wells of direct observation'. We cannot go very far in our study of political science without understanding the way in which human beings behave as individuals and as members of society when subjected to various kinds of stimuli. We need to study such factors as habit and instinct, imitation and suggestion, if we are to understand human behaviour aright. 'Government to be stable and really popular must reflect and express the mental ideas and moral sentiments of those who are subject to its authority; in short, it must be in harmony with what Le Bon calls the "mental constitution of the race *(22:38)*".' A study of mob psychology and of such factors as the prestige complex and the psychology of the oppressed can help us to understand events in Europe in recent years.

At the same time it is necessary to remember that it is easy to exaggerate the importance of psychology to political science. E. Barker,

in his *Political Thought in England: Spencer to Present Day*, clearly brings out the limitations of the psychological method as follows:

(1) The psychologist does not and cannot deal in terms of value. Values belong to the moralist. Psychology deals with things as they are; ethics with things as they ought to be. Therefore political theory should look to ethics rather than to psychology for constructive help.

(2) Psychology seeks to explain civilised life in terms of savage instinct—the higher by the lower. This does not seem to be the correct evolutionary method. The right procedure would be to explain the lower by the higher. Man explains the monkey, and not monkey the man. It is illogical to explain civilised life by the conditions of life in pre-historic times. Reason is none the less reason when it is not conscious inference. Habit and instinct, suggestion and imitation exist, but they exist in connection with intelligence. Because a thing is primitive does not mean that it is final.

(3) A well-known psychologist like McDougall gives a full account of the origin of instincts that act *in* society, but he hardly shows how they issue *into* society. 'He seems to do a great deal of packing in preparation for a journey on which he never starts (*3*).' After collecting all the necessary psychological facts the fundamental question is: What are we to make of them? On this, psychology is rather silent.

(4) According to Catlin, psychology is concerned with mental acts which must be considered in relation to the observable, individual mind. Politics is concerned with the impulsive or willed relations, as such, of social beings.

6. Political Science and Law

The State is both a social phenomenon and a legal institution and any attempt to explain the State in its entirety must include both these points of view. From the legal standpoint, the State is a person in the sense that it is a subject of rights and duties. It can sue and be sued in law court. Or, to put it in the form of a definition, it is 'a corporation composed of men domiciled upon a particular territory and endowed with original ruling power (*19*)'.

Jurisprudence may be defined as the science of law. Although, strictly speaking, a sub-division of political science, it is, owing to the vastness of its scope and its technical nature, studied as a separate branch of study.

Constitutional law defines the organs of the State, their relations to one another, and the relations of the State to the individual. International law regulates the relations of states to one another.

Stoicism and Roman jurisprudence have made much contribution to the development of Western law. Hallowell observes that the universal brotherhood of man and the universal law of reason are the principal contributions of Stoicism to Western civilisation. In the opinion of the same writer, the state is a partnership of law according to Roman thought, but is a partnership of love according to Christianity.

7. Political Science and Geography

Man is, to a considerable extent, influenced by his physical environment and the geographical conditions under which he lives. It is easy to exaggerate the influence of the climate, topography, and physical features of a country upon the character, institutions and accomplishments of a people. While these external factors play an important part in man's life, it is necessary to remember that civilised man is not a passive tool of Nature. Like the lower animals, he does not blindly allow himself to be adapted to nature. By the use of intelligence and forethought he adapts nature to his purposes.

Aristotle was one of the earliest writers to give attention to the influence of geography upon the political institutions and the national character of a people. Among modern writers, Bodin in the sixteenth century gave close attention to this subject. After him, Rousseau worked out a correlation between climate and forms of Government. He held that despotism was most natural for warm climates, barbarism for cold climates, and good polity for moderate climates. He held also that the best form of Government for small countries was democracy and for large countries, monarchy.

In the middle of the last century, Thomas Buckle in his *History of Civilization* exaggerated the relation between physical environment and national character, contending strongly that geographical influences were the most important factor in moulding the character and institutions of peoples. He gave particular attention to the influence of climate, food, soil, and the 'general aspect of nature'. His extreme position is not shared by many to-day.

After making due allowance for exaggeration, it remains undoubtedly true that geographical conditions have influenced in considerable measure the determination of national policies and to some extent the character of political institutions (*23 : 42-66*). At the same time we are safe in saying that geography is a much less important factor in moulding social and political institution to-day than it was in earlier times.

Methods of Political Science

It is admitted by all writers that political science is an inexact science. It does not aim at absolute truth. It aims at relative truth. Consequently there is bound to be difference of opinion with regard to almost all political questions. What is sound politically to-day may not be sound a hundred years hence. No theory of the State can be considered as ultimate truth.

Because of these limitations some thinkers even refuse to give the name 'science' to a study of political theory. It is true that political science is not exact like mathematics, physics or chemistry. Two plus two makes four everywhere in the world except in a lunatic asylum. Two atoms of hydrogen and one of oxygen produce water whenever they chemically combine. These are universal and unvarying laws. But such laws we do not find in studying social sciences owing to the variability of human behaviour. It is difficult, if not impossible, to draw precise conclusions from political phenomena or to make exact forecasts about the future. Still, by a close and prolonged observation of political phenomena we can arrive at general laws and principles which can be of real help to us in solving the practical problems of government.

We cannot experiment with human society or the political order in the way in which a scientist can experiment with physical or chemical substances. We cannot at will introduce democracy in one state and aristocracy in another in order to study the effects of these respective forms of government. Physical phenomena and social phenomena differ fundamentally. Never the less, every law passed is an experiment, and a careful student can arrive at general conclusions based on particular phenomena. A study of political theory, thus, does not enable us to reach conclusions with mathematical precision. However, it can help us to discover probable truths, and 'probability' as Samuel Butler remarks, 'is the guide of life'. 'Prediction in physics may be certain ; in politics it can at best be no more than probable (7).'

A great many modern thinkers have given their thought and attention to the methods by which political phenomena can be collected and classified, with a view to reaching practical results. According to Augustus Comte, the principal methods are *observation, experiment* and *comparison.* Bluntschli holds that the true methods are philosophical and historical. To a great many present-day thinkers, inductive and pragmatic methods are more certain to lead to positive

results in political science than deductive and dogmatic methods. The methods which are generally favoured by them are—

(1) The experimental method,
(2) The historical method,
(3) The comparative method,
(4) The method of observation, and
(5) The philosophical method.

The first four of these methods have a great deal of similarity and so can be easily bracketed together. The fifth method belongs to a category of its own. A combination of these two types of methods alone can lead to valuable results. The inductive and deductive methods are complementary to one another.

1. The Experimental Method

As seen already, there is small opportunity for conscious experimentation in a field in which human beings constitute the subject. Human motives and human values cannot be weighed and tabulated like a chemical substance. Never the less, all laws, policies, and political systems are instituted within a necessary framework of experiment, and by studying such experiments the political scientist is able to reach positive conclusions. It is his task to take note of the political events and innovations that constantly go on about him and to make deductions from them. Governments are ever trying experiments on the community. History is experimentation on a vast scale.

In the modern world, we do not rely on unconscious experimentation. We make conscious political experiments, in the light of past experience, when and where circumstances permit. Witness, for example, the grant of responsible self-government to Canada based on the Durham Report of 1839 and the constitutional reforms granted to India and the transfer of complete power by constitutional methods. Thus there is a definite and distinct place for the experimental method in political science.

2. The Historical Method

This may be regarded as a form of the experimental method. A proper study of history is an invaluable aid to the student of political science. It is a corrective to hasty and one-sided conclusions in politics. The value of studying the origin, growth and development of political institutions is the fact that from such a study we can draw conclusions for future guidance. History not only explains the past; it contains the key for interpreting the future.

The historical method is mainly inductive in character. It is based

on observation and study of historical facts. Its chief limitation is that it cannot, and does not, deal in values. Hence it has to be supplemented by the philosophical or ethical method which involves ultimate ends and values. Yet indirectly the historical method does enable us to judge the goodness or badness of actions.

In using the historical method, there are certain precautions that the student will do well to take—

(*a*) He should guard against superficial resemblances and parallels.

(*b*) He should not let the present and the future be determined solely by the past. The historical method should not become a synonym for hidebound conservatism. Because a thing has been thus and so in the past does not insure that it will be thus and so in the present.

(*c*) He should avoid the temptation to make history support his pre-conceived notions. He should be altogether objective or scientific in his outlook.

(*d*) He should remember that the oft-quoted saying that history repeats itself is only a half-truth. The other half-truth is that history never repeats itself. Historical conditions never exactly reproduce themselves. 'One cannot step twice into the same river (7).'

3. The Comparative Method

This method supplements the historical method. It goes back to the time of Aristotle and has been used effectively in modern times by De Tocqueville, Bryce, and others. Study of history is useless if we cannot make valid comparisons. The comparative method helps us to relate events, to establish causes and effects, and to arrive at general principles. It gathers together the multiplicity of phenomena, arranges them in order, and selects the elements common to them.

If this method is to be usefully employed, we must take into account not only resemblances but also differences. We are not to be in a hurry to come to conclusions. The phenomena from which the common elements are to be selected must not be too different in character. Comparisons must not be pushed too far and analogies must not be far-fetched.) Generalisations of a vague and broad character should be avoided. It is profitable on the whole to confine our investigations to the states which have sprung from a common historical background and which are relatively near in point of time.

A particular form of the comparative method is the analogical method. It is very useful in political science, provided analogy is not pushed to the limit of identity. To establish an analogy between two

things is not to establish their identity. Analogy is not proof. It can give us probability, but not certainty.

4. The Method of Observation

Like the foregoing, the method of observation is an inductive one. It was followed by Lord Bryce to a very great extent. It rests upon an observation of the actual working of political institutions at close range. Before undertaking his monumental works, *The American Commonwealth* and *Modern Democracies*, Lord Bryce visited the countries concerned and based his conclusions upon personal conversations with public men and the observation of governments at work. A method like this, based as it is on direct observation and reflection, has much to commend it. It is practical and concrete and has a refreshing sense of reality about it. It is in living touch with facts and is free from the charge of being abstract and doctrinaire. Never the less, it is a method which has to be used with caution. When the facts are very many and often conflicting, only a man with trained eye and mature judgment can arrive at sound conclusions. One must have the ability to sift evidence and rightly interpret one's data. There is a danger of seeing the things that one wants to see and leaving out those things of which one chooses to be oblivious. Likewise, there is a danger of missing the wood for the trees. The first desideratum is no doubt to get at facts. But facts are of little use in and by themselves. A penetrating and understanding mind is needed to interpret them aright and to make them real and living.

5. The Philosophical Method

Unlike the foregoing methods, this method is of a deductive or *a priori* kind. Its chief exponents are Rousseau, Mill, and Sidgwick. On philosophical and ethical grounds, it first determines the nature and end or purpose of the State and then casts about for the best forms of political institutions for the realisation of this end. It begins with abstract concepts, then attempts to harmonise them with the actual facts of history. The chief danger of this method is that it may easily become imaginative and visionary, as seen in More's *Utopia* and, to some extent, in Plato's *Republic.* It may not have any basis whatever in historical facts and may thus sink into mere ideology. Attempts to construct an ideal type of State have engaged the attention of thinkers from the days of Greek philosophy, through the scholasticism of the Middle Ages down to the present day.

Conclusion. The careful student would seek to combine the historical and philosophical methods. He would test and correct his

deductive principles by the actual facts of human experience and interpret the facts of life in the light of abstract or *a priori* principles. While his feet stand four square on solid facts, his head would soar high into the skies. He would seek to bring about a happy blend of realism and idealism. He would have no use for that type of realism which does not look much beyond one's own nose, nor for that type of idealism which loses itself in the clouds. He would follow the footsteps of men like Aristotle and Burke who combine in their writing the historical and philosophical methods.

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2

THE NATURE OF THE STATE

THE STATE is the most universal and most powerful of all social institutions. Wherever human beings have lived together for any length of time, there we find organisation and authority. And where we find organisation and authority, there we have the nucleus of the State. The only outstanding example of a people who form a society but do not constitute a State is that of the Eskimos, a people of whom Toynbee speaks as having an arrested civilisation (*73*).

As the Greek writers have taught us to think, the State is both a natural and a necessary institution. Headache may be natural, but is not necessary. The State is natural in the sense that it has arisen out of the primary instincts of man and is a gradual growth. Aristotle declares that man by nature is a political being. The development of the original family, according to him, meant a village, and when many villages joined together there came into being the city or State. Each city is a 'work of nature'. To Aristotle, to live in the State and to be a man were identical, for whoever was not a member of the State or was unfit to be one was either a god or a beast; he was either above the State or below it. Modern writers sometimes speak of the political instinct of man. By that they mean that the State has its roots in the natural impulses of man and that it cannot be easily eradicated. The State grows, is permanent, and reappears when it is destroyed. If it is claimed that the State is not natural in the sense in which the family is natural and that it is the artificialisation of some human need, our answer is that 'it is natural for human beings to be artificial (*37*)'. But our contention is that the State is not an artificial creation. We are born into the State. We do not ordinarily choose it and cannot, of right, claim dissociation from it. Spencer is mistaken when he says that the individual has a 'right to ignore the State'.

The State is necessary for man's growth and development. Without it man cannot reach the height of his perfection. Aristotle holds that the State first came into being in order that we might live, but is continued in order that we may live happily. In his own words, 'the

State comes into existence originating in the bare needs of life, and continuing in existence for the sake of a good life.' In other words, satisfaction of economic wants is the chief reason why the State first came into being. But its continuance lies in the fact that it is indispensable to good life, *i.e.*, to a life of happiness and nobility. Aristotle's teacher, Plato, finds the necessity for the State in the fact that no man is sufficient unto himself. The need of man for social co-operation and social endeavour, at a certain stage of development, expresses itself in the State.

The State is the most universal and most powerful of all social institutions; it is natural and necessary. What then is the State?

1. The State and Society

The State is not identical with society. To the early Greek thinkers the State was indistinguishable from society. This identification of the State with society is to be explained by the peculiar circumstance that prevailed in the Greek city-state. The city-state was small in size and compact in population. The citizens knew one another personally and met together in common assemblies to pass laws and choose magistrates. They were knit together by common interests. The problems with which they were faced were simple in character. In these circumstances it was natural for the Greeks to consider the city as including the whole life of man. 'She is ours and we are hers' was the characteristic attitude of the Greeks towards their city or State. The city performed multifarious functions. It was the State, the Church, and the School, all in one. The social life was, to the Greek, a life of citizenship.

Whatever justification the Greeks may have had for the identification of the State with society, we, to-day, have no such justification. Interpreted strictly, the State is a political organisation. It is society politically organised. Society is both broader and narrower than the State. It may be used to describe the whole community of mankind just as much as a small social group of a village. In its broader sense, it transcends the individual state and national boundaries; *e. g.*, the Islamic Society and the Free Mason Brotherhood.

The State is part of society but is not a form of society. It is more than a number of loosely connected individuals who happen to live together. It is a number of people associated politically, organised under and through some form of Government, occupying a definite portion of the earth's surface. Society exercises authority largely through customs. The State exercises authority through laws enacted

and enforced by Government. The State is the only instrument which can legitimately use force. Society can use only moral persuasion or influence and social ostracism or expulsion. It cannot imprison a man for the violation of its requirements. To use the language of E. Barker, the area of society is voluntary co-operation, its energy that of good will, its method that of elasticity; while the area of the State is rather that of mechanical action, its energy force, its method rigidity. In the words of MacIver, 'the State is a structure not coeval and co-extensive with society but built within it as a determinate order for the attainment of specific ends (*55 : 40*)'. The importance of the State to society is clearly brought out by E. Barker when he says, 'Society is held together by the State; and if it were not thus held together, it could not exist (*3 : 118-19*)'. Society may be compared to the many planks which comprise a wooden barrel, and the State to the iron band which goes around them holding them together in their proper places.

2. The State and Government

In our ordinary conversation we use the two terms interchangeably. Yet a moment's reflection is enough to show that they are not one and the same. Government is the instrument of the State. In the words of Rousseau, it is 'a living tool'. It is the practical organisation of the State through which the will of the State is 'formulated, expressed and realised'. The ends and purposes of the State are executed through the instrumentality of the government.* Without Government the State has no existence. The State is largely an abstraction, but Government is concrete. The State is permanent and fixed while Government is transitory. Changes in the form of the Government do not mean changes in the continuity of the State.

The principal ways by which the State may cease to exist are:

(1) Conquest followed by incorporation.

(2) Voluntary choice.

(3) Destruction of the land or the people of a state.

Respective examples are:

(1) The incorporation of the Kingdom of Hanover into Prussia after its conquest in 1866.

(2) Union of the small states of Italy into the Kingdom of Italy.

* Laski describes government as the agent of the State. 'It exists to carry out the purposes of the State. It is not itself the supreme coercive power; it is simply the mechanism of administration which gives effect to the purposes of that power (*50 : 23*).'

(3) The threat of William of Orange that he would cut the dykes of Netherlands and destroy the country rather than see it conquered by the Spaniards.

The authority of the Government is not original. It is derived from the state. The functions of any Government are executive, legislative, and judicial. Government is an expression of the genius of a people.

3. The State, Nation, and Nationality

In political science these terms have often been used as synonymous terms. Even to-day, political thinkers in general do not make a careful distinction between 'nation' and 'nationality'. For the sake of clarity of meaning and precision in the use of words, it is wise to employ these terms to describe distinct things. The State, as we have already seen, is a political organisation. It may or may not be co-existent with nationality. Where a State is exclusively composed (or nearly so) of one nationality we get a nation-State. But where we have a State which consists of more than one nationality, or where a nationality is spread over several states, the State and nation do not coincide. Nation means a self-governing nationality. Or, as Gilchrist puts it, a nation equals State plus nationality. The same writer goes on to say that the term nation to-day has acquired a definitely political meaning. 'It stands for the unity of the people organised in one State and acting spontaneously as a unity.' Nationality is primarily a cultural and ethnical term. It is a spiritual sentiment or principle. Factors which make a people a nationality are geographical unity, common racial stock, common culture, common language, religion, customs and traditions, common history, common economic interests and political associations, common hopes and aspirations, and the like. It is not necessary that every one of these factors should be present in order that a people may become a nationality. Still without at least some of these factors nationality is unimaginable. On the political side, nationality is defined as the disposition to act together politically.

Since the early part of the nineteenth century, there has been a growing feeling that every group of people who claim to be a nationality should be allowed to have an independent political organisation. This movement received an impetus in World War I and expressed itself in such potent ideas as the 'self-determination of Nations' and

* The term nation is here used in the sense of nationality.

'one nation, one State'. Whether this is the goal towards which political progress should be directed is a question which will claim our attention later.

The distinction that we have drawn between a 'nation' and a 'nationality' is not the one which is usually drawn. Gettell observes: 'Considerable confusion arises from the fact that publicists do not agree in their usage of the terms "nation" and "nationality". Some use the term "nation" to mean a population of ethnic unity, regardless of its political affiliation; others widen the term to mean a population having also political unity and identity of "nation" and "state". Some use the term "nationality" to signify the principle or characteristic that creates a nation. Others distinguish nation and nationality by using the former to mean a population of the same race, language and tradition inhabiting the same territory and constituting the larger part of its population and the latter to mean one of several distinct ethnic groups scattered over an area and forming but a comparatively small part of its population (*26 : 159*).'

4. One-sided or False Views of the State

There is scarcely any term in political science which has given rise to more confused thinking than the primary term 'State'. Almost every writer of political science gives his own definition of the 'State', and there are hardly any two thinkers who agree on what they consider to be a satisfactory definition of the 'State'. MacIver in his *Modern State* sums up views of the State which are either narrow and one-sided or altogether false.

(1) According to writers like Oppenheimer, author of *The State*, the State is essentially a class-structure, 'an organisation of one class dominating over the other classes'. Or, as another writer puts it: 'The State is the formal staff of the class which owns economic power.' It is needless to say that this is a caricature of the State rather than a correct view of it. It is in line with the teaching of Karl Marx, according to whom the modern State is an agency for the exploitation of the poor by the rich. As a definition of the State, Oppenheimer's definition may be true of certain states at certain times, but we object to making it apply to all states at all times. It applies more to a diseased State than to a normal one. In a normal or well-ordered State, individual or class interests are duly subordinated to the general interest or common good.

(2) Some interpret the State as a power-system. They interpret it exclusively in terms of might. Machiavelli is the forerunner of this point of view. Many German writers such as Treitschke upheld the same view during World War I. We totally disagree with this view. Force is no doubt an essential part of the State, but it is not the foundation of the State. Might never makes anything right. It is right which can lend support to might. When used in the interest of right, might may be justifiable. T. H. Green aptly remarks, 'Will, not force, is the basis of the State.' Force is the distinguishing mark of the State. But the reason why we as enlightened citizens obey a well-ordered State is that we are conscious that in obeying the State we obey the best in ourselves, we obey our own individual wills purged and purified of their selfishness. Obedience to the State is highly justifiable when it arises out of the consciousness that, in obeying the will of the well-ordered State, one promotes a common good of which the individual good is an intrinsic part.

In criticising the view that politics is 'the struggle for power', Hallowell rightly remarks that this view brings out the *fact* of power, but not the *purpose* for which it is exercised. The power of relationship, says he, is a two-way, and not simply a one-way, relationship.

(3) To thinkers like Grotius and Althusius the State is a welfare-system. One form of this theory is that the State is in the nature of a public utilities company. We have no hesitation in saying that this is too narrow a view of the State. Promotion of public welfare is undoubtedly a very important duty of the State. But to identify the State with a public utilities company, like the U. P. Electric Supply Company, is clearly a mistake. The State is not like a company at all. Membership in it is not voluntary. We are born members of the State. We cannot enter the State when we like and leave it when we like. Further, the view of the State under consideration ignores the fact that besides being a welfare-system, the State has a life, will, and personality of its own, which, in some ways, are different from the life, will, and personality of the individual members comprising it.

While many in the world hail the 'Welfare State' as their saviour, to many in the United States it is anathema.

(4) There are a few writers, whose number is happily diminishing to-day, to whom the State is in the nature of a mutual insurance society for purposes of mutual protection. Herbert Spencer was a staunch advocate of this theory. To him, the State is 'a joint stock protection company for mutual assurance'. We have already seen that the State cannot be compared to a company, much less can it be compared to an insurance company. Views like this do scant justice to the organic nature of the State, according to which, individual good and social good are intimately related and are not two clearly separable entities. If mutual protection is the only purpose for which the State exists, what is there to deny the name 'State' to a group of brigands who band themselves together against the rest of society ? Any self-defence group would be entitled to describe itself as a State.

(5) Some interpret the State as entirely a legal construction. To them the State is a community 'organised for action under legal rules'. Once again, we would say that this is a very narrow view of the State. There is no doubt whatever that the legal aspect of the State is a very important aspect, but it is not the only aspect. The State guarantees to its citizens rights and it enforces duties. But that does not exhaust the nature or functions of the State. The legal view of the State ignores the higher life of the State altogether. 'The State', says Hegel, 'is the world the spirit has made for itself.' Miss Follett, in her *New State*, remarks: 'The home of my soul is in the State.' The State is, to our way of thinking, as much of a spiritual entity as a legal construction.

(6) The individualists consider the State a necessary evil. They regard every action of the State as a subtraction from the freedom of the individual. Hence, they say, the State is an evil, although it is rendered necessary by the selfishness and rapacity of man. If each individual were left to himself, they argue, he would seek his own self-aggrandisement at the expense of others and there would be no social peace and no social order. The State thus becomes a concession to human weakness. Spencer and even such an enlightened thinker as Bentham uphold this point of view. As for our-

selves, we believe that it is a mistake to consider the State an evil, or even a necessary evil. We agree with the idealists when they say that the State is a positive good. It is man's truest friend, for the fullest and freest development of human personality is impossible without the instrumentality of the State.

(7) The mild anarchists modify the position of the individualists to the extent of holding that the State is an evil, but that some day it will be unnecessary. They rely unduly upon the changeability of human nature, believing that with the increasing moral development of man the State will become less and less necessary and will eventually 'wither away'. The extreme anarchists such as those who subscribe to anarchistic communism hold that the State is an unmitigated evil, and, therefore, the sooner we get rid of it the better it will be for the moral growth of man. While there is much that is appealing in the anarchist position, we must admit that it does scant justice to the fact that the State has its roots in human nature. The anarchist has to persuade our instincts as well as our reason that the State is an evil which carries with it no compensating factor. A contention which we shall attempt to establish in a later chapter is that obedience to authority is natural and that authority and liberty are complementary, and not antithetical to one another.

(8) Some modern writers prefer to regard the State as one in the order of 'corporations'. This is the pluralistic point of view in general. According to this view, the State is to be reduced to a position of equality with other permanent groups like the family, the church, the trade union, the social club, etc., which cater to our varied interests. We refuse to accept this view because of our conviction that the State is unique in its character. It is the only one of its kind. It is in a class by itself. It is an all-inclusive association, an association *par excellence*. By saying all this, we do not mean to suggest that we are prepared to accept the orthodox monistic point of view *in toto*. We realise that the time has come for us to recognise that the various permanent groups within society have a definite and distinct place to fill in the life of man and that, in order to do this satisfactorily, they

should have as large a degree of internal autonomy as possible. Nevertheless, we need a superior organisation to adjust relationships and to keep the various subordinate organisations in their proper places. That organisation is the State.

(9) The modern totalitarian view of the state regards the whole life of the individual as coming within the jurisdiction of the State. There is no part of a man's life which he can call his own. If he lives, he lives for the State; and if he dies, he dies for the State. Mussolini stated the totalitarian view in the words: 'All within the State, none outside the State, none against the State.' The motto which he placed before the youth of his country was: 'To believe, to obey, to fight.'

The totalitarian view means regimentation of the life of the individual. It is a wholesale denial of the worth and dignity of human personality, a system in which the individual becomes a cog in the wheel of the State.

A Positive Statement of the State

1. Priority of the State

The State is the highest form of human association. Without it man's life is incomplete. It provides the environment for the self-realisation and self-development of the individual. As Aristotle holds, the State and household differ not in degree, but in kind. The household exists for satisfying the physical needs of life, the State for the moral and intellectual needs. The notion of a city (or State), says Aristotle, naturally precedes that of a family or an individual, for the whole must necessarily be prior to the parts. The state is thus prior to the individual. Men naturally tend to associate with each other. To paraphrase Aristotle, it is by the completion of civil society that man is the most excellent of all living beings. Without law and justice man would be the worst of all beings. Only in the State does the individual really become a man. Without the State he might be potentially a man, but would be actually a brute.

Thus the State, as an idea, is prior to man. This does not mean that the end of the State is something apart from, or contrary to, the end of the individual. Properly understood, the end of both is the same, *viz.* the development of human personality. In view of what

has been said earlier, it is clear that this development is impossible in isolation. No man is sufficient to himself. The family, social organisation of one kind or another, and the State testify to this fact. As Lord puts it, the State is an essentially necessary aspect of, or element in, the individual's own will. It is partly an external organisation fulfilling the most universal and permanent needs of human personality and partly the individual himself in a social capacity. It is the extension and completion of the moral and rational will of the individual. It is a rational organisation of the various interests and purposes of the individual.

2. The State as Will and Mind

In one aspect, then, the State is the individual's mind. In another, 'it is his body and force *(54)*'. It completes the bodily force of its citizens. Physical coercion is an indispensable element in the constitution of the State. In the last analysis the State must have power to coerce the unsociable and recalcitrant will. The State interprets the individual to himself. Force used by the State is an effective means of freeing the individual from the low level of existence which he tends to reach in his ordinary and unreflecting moments to a higher level of existence where he is able to see his individual good as an intrinsic part of the common social good. There is more truth than may appear at first sight in Hegel's contention that the criminal has a right to be punished.

3. The State of Force

The State is the one organisation that transcends class and represents the whole community. None of the other associations—social, religious, political, economic, educational—can include the whole of the individual. In the striking words of Miss Follett, 'The State cannot be composed of groups, because no group, nor any number of groups, can contain the whole of me and the ideal State demands the whole of me. Again, the true State must gather up every interest within itself. It must take over many loyalties and find how it can make them one. I have all these different allegiances. I should indeed lead a divided and, therefore, uninteresting life if I could not unify them. The true State has my devotion, because it gathers up into itself the various sides of me, is the symbol of my multiple self, is my multiple self brought to significance, to self-realisation. If you leave me with my plural selves you leave me in desolate places, my soul craving its meaning and its home. The home of my soul is in the State.'

4. The Uniqueness of the State

A corollary which follows from the above view of the State is that

we require a supreme organisation, *viz.* the State to adjust the 'outstanding external relationships of man in society (*55*)'. Life becomes a chaos without the State. It is the State which reconciles differences and gives unity and meaning to the many-sided life of man. In a complex and complicated world where there is an ever-growing conflict of loyalties, there is an urgent and increasing need for the State as an, adjuster of relationships. It is the business of the State to keep the family, the church, the trade union, the social club and such groups, in their proper places and to see that nothing is done to disturb the harmony of society.

5. The State as an Adjuster of Relationships

The State can concern itself only with those interests of man which can reasonably be regarded as universal. It cannot undertake the promotion of the sectional or class interests of its numbers. For this latter purpose, we have such organisations as the family, the church, the trade union and the cultural organisation. As Garner puts it, while the purpose of a voluntary association is limited to the pursuit of one, or at most, a few particular interests, the State is charged with the care of general rather than particular interests(*23 : 63*). This explains the reason why trade unions in England are not allowed to exact a political levy. In the words of Laski, 'the State stands above all narrow interests in the society and uses its coercive power on behalf of the permanent and abiding interests for which men live together (*50 : 29*).'

6. The State and Universal Interest

Finally, the State can regulate only the outer aspects of conduct. It cannot take motives into account, since they are altogether of an inner character. The State may consider intentions, but motives fall outside its scope. When we consider intentions, we are concerned with the question of whether a given act was purposeful or accidental. But when we consider motives, we are concerned with the inward and moral nature of the question in hand. Although the State is a moral and spiritual institution and is an extension of the personality of the individual, the instruments at its disposal are of such an external character (force) that it can deal only with outer conduct and intentions, not with motives. From this it follows that the State cannot enforce or promote morality directly. It can only make it possible for the individual to earn his own morality. T. H. Green rightly says: 'the only acts which it (the State) ought to *enjoin* or *forbid* are those of which the doing or not doing, *from whatever motive*, is necessary

7. The State and Morality

to the moral end of society (*29*).' In simple language, it means that the State ought to undertake only those actions which are so absolutely indispensable to the good life of society that in enforcing them it can take the risk that some people will perform, or refrain from them, from a low and unworthy motive. Mechanical action or automatism is the risk which the State at times takes in enforcing its will in the best interests of its members.

To sum up the discussion, the State is not an end in itself. It is a means by which the collective needs of men can best be secured in an orderly and just manner. Without the State, the individual sinks into insignificance. It is the State which holds the social order together. By a judicious use of reason and compulsion, permission and authority, it can promote the true well-being of society of which the true well-being of every individual is an intrinsic part. The State has no right to crush or hinder the individuality of person. Nor has it a justification for existence so long as are absent the minimum conditions necessary for the good life of every individual.

Essential Elements of the State

The essential elements of the State are population, territory, sovereignty, and government.

1. Population

It is obvious that there can be no State unless people live together an associated life. The question relating to the number of persons necessary to constitute a State is only of theoretical interest, although ancient writers laid much stress on it. Plato in his *Laws* fixed the number of citizens for an ideal State at 5,040. Aristotle considered 100,000 too many. In recent times, Rousseau who was an ardent admirer of the Greek city-state life wanted to revive the ancient city-state with a compact population. According to him 10,000 would be an ideal number. Modern states vary in size and population as widely as the British Empire, Russia, and China on the one hand, and Monaco and San Marino on the other. the latter of which has an area of only 38 square miles.

From the legal point of view, population as an element of the State includes both those who rule and those who are ruled. The people of a State possess a dual character. In the capacity of those who have a share in framing the will of the State, they are citizens, and in the capacity of those who obey the will thus formed they are subject. This distinction we owe to Rousseau. As citizens, people possess

rights and as subjects they have duties.

2. Territory

There can be little doubt that without fixed territory there can be no State. Yet not all political thinkers are absolutely agreed on it. The modern State undoubtedly requires a definite portion of earth's territory over which it can have undisputed authority. In contrast with the ancient State, the modern State is essentially territorial in character. A nomadic people cannot be said to constitute a State, although they may have some form of political organisation through common subjection to a leader or chief. In the words of Prof. Elliott, 'Territorial sovereignty or the superiority of the State over all within its boundaries and complete freedom from external control, has been a fundamental principle of the modern State life (*19*).'

A fixed territory is so much an essential factor of the modern State that no two separate and unrelated States can claim jurisdiction over the same area. The only apparent exception is that of the federal State, where two 'States' exercise authority over the same territory. Prof. Elliott says it should be remembered that 'they are related States' and that 'the sphere of each is carefully determined by the provisions of the written constitution'.

3. Sovereignty

Sovereignty and law are the two distinguishing characteristics of the State.✓By sovereignty we mean ultimate authority, an authority from which there is no appeal. Associations other than the State may have population, territory, and even some form of governmental organisation, but they have no sovereignty. In the last resort, all individuals and groups of individuals within the State have to submit to the will of the State. This fact we express by the term internal sovereignty. In external relation, too, the modern State claims final authority. It may obey international conventions and understandings, but until world government attains respected and powerful existence, if it does, there is no power on earth that can compel obedience of the state to a higher entity. This attribute of the State we express by the term external sovereignty. By virtue of its sovereign authority the modern State claims supremacy in internal matters and freedom from the control of external governments. To use the language of Laski, 'It is by the possession of sovereignty that the State is distinguished from all other forms of human association (*50 : 21*).'

The orthodox view of sovereignty, as found in Hobbes, Bentham, and Austin is expressed by Lewis when he says: 'The sovereign has the

complete disposal of the life, rights and duties of every member of the community.' MacIver and many other modern writers dissent from this view. To MacIver, the state is an association, unique in its kind and of invaluable significance but still an association, like the rest (*55 : ch. XII*). We shall take up a criticism of this view in a later chapter.

4. Government

As seen already, government is the political organisation of the State. It is the instrumentality through which the sovereign will of the State finds concrete expression. If the ultimate sovereign in a democratic country is the people, the legislative sovereign is the government. A State without government is inconceivable, for the State wills and acts through the government. No particular form of government is essential. The form of government depends upon the nature of the State which in turn depends largely upon the political thought and character of the people.

Definitions of the State

A great number and variety of definitions of the State have been attempted. We shall cite only some of the most satisfactory. Holland defines the State as a numerous assemblage of human beings, generally occupying a certain territory among whom the will of the majority or of an ascertainable class of persons is by the strength of such a majority made to prevail against any of their number who oppose it. Philimore, looking at the State from the point of view of international law, defines it as 'a people permanently occupying a fixed territory, bound together by common laws, habits, and customs into one body politic, exercising through the medium of an organised government independent sovereignty and control over all persons and things within its boundaries, capable of making war and peace and of entering into all international relations with the communities of the globe'.

Burgess defines the State as 'a particular portion of mankind viewed as an organised unit'. This definition is substantially the same as that given by Bluntschli to whom 'The State is the politically organised people of a definite territory.' Wilson's definition is both short and simple. To him the State 'is a people organised for law within a definite territory'.

Among the definitions given by contemporary writers, those of Garner and MacIver deserve special mention.

Garner says: 'The State, as a concept of political science and public law, is a community of persons more or less numerous, permanently occupying a definite portion of territory, independent, or nearly so, of

external control and possessing an organised government to which the great body of inhabitants render habitual obedience (*23 : 52*).'

MacIver's definition which carries with it a pluralistic tinge is: 'The State is an association which, acting through law as promulgated by a government endowed to this end with coercive power, maintains within a community territorially demarcated the universal external conditions of social order (*55*).' This definition which, in many ways, is the best, emphasises 'law', 'government', 'coercive power', 'communal unity', 'clearly marked territory', and 'the universal external conditions of social order'—elements which should enter into any sound view of the State.

Laski defines the State as 'a territorial society divided into government and subjects claiming, within its allotted physical area, a supremacy over all other institutions (*47 : 21*)'.

Definitions like those of Hegel are highly abstract and rather one-sided. A recent writer defines the State as 'the organised body of human beings living under one government and in one definite territory'.

THE ORGANIC NATURE OF THE STATE

From the days of Plato down to the present day it has been the common stock-in-trade of political thinkers to compare society and, in turn, the State, to a living organism. Some have used the analogy, while some have tried to apply it at every point, with the result that not a few among the most serious-minded writers on political science are inclined to dismiss the conception wholly as being useless, if not mischievous.

Plato compared the State to a magnified human being. He drew an elaborate parallel between the functions of the State and those of the individual. His three-fold classification of society into the rulers, the warriors, and the working classes, Plato bases upon the three faculties of the human soul, *viz.* wisdom, courage, and desire. The State is to him like the capital letter 'A' while the individual is comparable to the small letter 'a'. The State is the macrocosm, and the individual, the microcosm. Aristotle drew a comparison between the symmetry of the State and symmetry of the body and held firmly to the belief that the individual is an intrinsic part of society. Cicero, who in many respects depended upon the Greek thinkers for his political ideas, brought out a parallel between the head of the State and the

spirit which rules the body. In the early days of the Christian Church, St. Paul regarded the Church as the living body of Christ. On the basis of this teaching mediaeval writers based their controversies on the relative claims of the Church and State to the allegiance of man in both spiritual and secular affairs.

Among the early writers of the modern period, Hobbes and Rousseau gave much attention to the organic conception of the State. Hobbes compared the State to a huge, imaginary monster called the Leviathan, 'which is but an artificial man, though of greater strength and stature than the natural'. He even drew a minute parallel between the weaknesses of the State and human ailments. Thus the State could suffer from boils, scabs, pleurisy, and the like. This elaborate parallel between the social organism and individual organism is amusing, coming as it does from one who adheres to the social contract theory, according to which the State is a deliberate creation of the human will. According to Rousseau, both the body politic and the human body possess the 'motive powers' of 'force' and 'will'. The legislative power of the State is compared to the heart and the executive power to the brain.

Nineteenth century political thought began with a reaction against the view that the State is an artificial creation of man. It tried to establish the truth that the State was not man-made, but a gradual, unconscious, and inevitable development of human nature. In this endeavour the familiar conception of the organic nature of society was revived and became a fundamental part of the thinking of German idealists especially. Fichte, who belonged to this latter group of theorists, was the first to bring out clearly the interdependence of the individual and society. He held that the individual had no meaning and significance in and by himself, apart from society, but was an essential part of the social whole. In his own words: 'In the organic body each part constantly maintains the whole, and is in maintaining the whole thereby, itself maintained; just so stands the citizen in relation to the State.' Early idealists thus looked upon the State as a moral organism.

Among later German writers, it was Bluntschli who exaggerated the organic doctrine more than any of his predecessors. He went so far as to attribute qualities of sex to the State. The State, he said, was masculine in character, while the Church was feminine and on this ground, Bluntschli vigorously opposed the extension of political rights to women. In spite of this exaggerated description, there are elements of truth in the organic conception of the State, as presented by

Bluntschli which need to be noted. The State, he says, is a moral and spiritual personality. 'As an oil painting', he says, 'is something more than a mere aggregation of drops of oil, as a statue is something more than a combination of marble particles, as a man is something more than a mere quantity of cells and blood corpuscles, so the nation is something more than a mere collection of external regulations (*22 : 59*)'. The State is a union of mind and will. It is the community in action.

Herbert Spencer in the nineteenth century is the supreme example of a writer who works out to the minutest possible extent the parallel between an individual organism and a social organism and yet misses the essential points of the comparison. He uses the organic analogy to prove his own preconceived notions of individualism. The analogy is used so very literally in an earlier essay that the up and down lines of a railway are compared to the arteries and veins of an animal. Money is compared to the blood corpuscles and the telegraph wires to the nerves. The text on which Spencer preaches a homily is: 'an organism grows and is not made'. The homily is that since the State is an organism it should be allowed to grow of its own accord, to grow spontaneously, and should not be propped up by artificial aids. Free education, compulsory sanitation, public libraries, public parks, etc., all interfere with the spontaneous growth of the organism, and are, therefore, justifiable. Spencer overlooks the fact that since the State is a highly evolved and cultivated organism, the proper comparison is not between it and a simple type of organism like the jelly-fish, but between it and a more evolved and cultivated organism like a plant in the garden or a domesticated animal. An organism of the higher kind grows as well as is made. But Spencer's organic State chooses ever to remain at the jelly-fish stage. Moreover, Spencer does not seem to realise that in the realm of politics, one who uses metaphors as literally as he himself does, can deduce from the analogy of an organism with its central idea of a nervous system, a theory of State socialism with greater ease and logical consistency than he is able to deduce his extreme individualism, with its accompanying doctrine of natural rights. As E. Barker points out, Spencer adopts where it is useful, and rejects where it is not, the organic conception of the State.

Elements of Truth in the Organic Theory

Almost the first thing that needs to be said in the use of this conception is that analogy is not argument. To establish a parallel between two objects is not necessarily to establish a logical connection between them. It is the failure to recognise this simple truth that accounts for

the literal way in which the organic conception has been used by writers like Bluntschli, Spencer, and Schaffle. We must remember that what an analogy can do after all is to make difficult things plain and abstruse things clear. It cannot take the place of proof.

Society or the State is not an organism. It is *like* an organism in some respects and *unlike* an organism in other respects.

(1) Like a physical organism, it has in it the principle of life, growth, and development. We are not prepared to say with some writers that every State passes through youth, manhood, old age, decay, and death. Since the changes that occur in the social organism are more or less imperceptible and incapable of exact measurement, we cannot very well apply to society terms like manhood, old age, decay, and death. Nevertheless, we believe that societies and states have a life, will, and continuity of their own apart from the lives and wills of the individual members living at any one time.

(2) In the social organism, just as much as in the individual organism, there is present an inter-relation and inter-dependence of parts. The parts depend upon one another and upon the whole; the whole in turn depends upon the parts. The welfare of each is involved in the welfare of all. Individual good and social good are intimately related. What concerns the individual sooner or later concerns the rest of society as well, although the intensity of feeling is not so strong as in the case of the individual organism. Society is not a loose collection of isolated or unrelated individuals. It is an organic unity, a living structure. It has a responsibility to the individual even in that sphere of conduct which Mill styles 'self-regarding'. Just as the family is bound to take an interest even in the supposed individual interests of his members, so also is society bound to take such an interest.

(3) Both the individual organism and the social organism embody the principle of differentiation of part and the related principle of the distribution of functions according to fitness. Tools to the man who can use them is the underlying idea. It is impossible that the whole body should be an eye, or ear or stomach. In the striking words of St. Paul: 'The body is not one member, but many. If the foot shall say, because I am not the hand, I am not of the body; is it therefore not of the body? And if the ear shall say, because I am not the

> eye, I am not of the body ; is it therefore not of the body ? If the whole body were an eye, where were the hearing ? If the whole were hearing where were the smelling ?.... Now they are many members, yet but one body. And the eye cannot say unto the hand, I have no need of thee : nor again the head to the feet, I have no need of you....And whether one member suffers, all the members suffer with it ; or one member be honoured, all the members rejoice with it.'*

To press the analogy beyond the above general truths is sure to lead to difficulty. The state is not an organism in the sense of being a physical structure. It is a mental structure, a 'union of different minds in a common purpose (2)'. It is a self-determining system of minds which are themselves self-determining. It is not a mechanical unity.

Value and Limitations

To Gettell we owe the following points in summing up the value and limitations of the organic theory ·

(1) The theory teaches the importance of the historical and evolutionary points of view
(2) It insists upon the effects of the natural and social environment.
(3) It lays stress upon the inter-dependence of citizens and political institutions.
(4) It emphasises the essential unity of social life and the intricate casual inter-relations of all its parts.
(5) It teaches that society is something more than an aggregate of individuals loosely thrown together without any unifying bond. It shows clearly that the members individually are in a peculiar sense dependent upon the whole and the whole in turn is conditioned upon the parts.
(6) It believes that men by nature are 'political beings' and that their universal tendency to social organisation creates the State.

At the same time, many of the analogies between the State organism and the individual organism, while striking, are often far-fetched and contradictory.

(1) The will of the State is not always identical with the wills of its component units.

* 1 *Cor. 12 : 14.26*

(2) In the individual organism, the laws of evolution are followed intuitionally. The growth of the State is in a large measure capable of conscious direction and control.

(3) The organic theory further runs the risk of magnifying the State as an end in itself, and of losing sight of the fact that the purpose of its existence is the well-being of its individual members. In other words, it is in danger of sacrificing the individual to society.

(4) The individual in the State does not exist solely to support and perpetuate the life of the whole. Each individual has to a large extent the shaping of his own life. He has a consciousness and a will of his own. All this is not true of the cells of the animal organism.

(5) A physical organism perishes and ceases to be living matter if the members are cut off. Such is not the case with a State when a member separates himself from it.

In conclusion, it must be said that the organic theory, being of a flexible character, should be used with great caution. Analogy should not be pressed too far. To apply it at all points is certain to lead to illogical and even absurd results.

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3

THE ORIGIN OF THE STATE

IN DISCUSSING the origin of the State, it is wise to distinguish the primary or pre-historical origin of the State from the evolution of the State in historical time. The first question is more or less of a speculative character. It takes us back to the pre-historical ages and to primitive man. We have no authentic information on how the State first began. The modern sciences of sociology, ethnology, anthropology, and the history of law no doubt cast some light upon this dim past, but they are unable to give us an insight into the primary origin of the State. In spite of this uncertainty, we are safe in saying that the State has existed in some form or other—rudimentary or somewhat developed—wherever human beings have lived together in large numbers. Lacking positive historical proof concerning primitive political institutions, we are obliged to resort to inferences and generalisations regarding the dim past on the basis of the slender evidence at our disposal.

THE PRIMARY OR PRE-HISTORICAL ORIGIN OF THE STATE

Various theories concerning the primary or pre-historical origin of the State have been propounded by historical and political writers. These theories are:

(1) The Divine Origin Theory;
(2) The Social Contract Theory;
(3) The Force Theory; and
(4) The Patriarchal and (5) Matriarchal Theories.

Kranenburg (author of *Political Theory, 1939*) groups these theories under (*a*) Theocratic, (*b*) Natural Law, and (*c*) Power theories.

1. The Theory of Divine Origin

This is the oldest theory concerning the primary origin of the State. According to it, the State is established and governed by God Himself or by some superhuman power. God may rule the State directly or indirectly through some ruler who is regarded as the agent or vice-

gerent or vicar of God. Such a State is known as a theocratic or God-ruled State. The Divine Origin or the theocratic conception is almost as old as the State itself and is found universally among early peoples. It is a well-authenticated fact that early forms of political authority were believed to be connected with the unseen powers. The earliest rulers were a combination of priest and king or the magic man and king.

The chief exponents of the Divine Origin Theory in the early times were the Jews. In the Old Testament we have constant references to the conception that God selects, appoints, dismisses, and even slays rulers. The king is treated as owing responsibility to God alone for his acts. The Greeks and Romans regarded the State as only indirectly divine. Although they did not divorce religious ideas from politics, they regarded the State as a natural manifestation of man's political instincts.

The theory of Divine Origin found some of its most earnest supporters among the early Church Fathers who based their teaching on the exhortation of St. Paul to the Romans: 'Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God*.'

The teaching of the Old Testament and the Church Fathers profoundly influenced the mediaeval writers in the controversy between the Church and the empire. Some of these writers used the Divine Origin Theory to establish the supremacy of the Church over the State and others to establish the supremacy of the State over the Church.

The Protestant Reformation gave a great impetus to the Divine Origin Theory and to the related doctrine of passive obedience or non-resistance to Governmental authority, although in religious matters it stood for individual liberty and the supremacy of individual conscience. The Divine Origin Theory more and more took the form of the theory of the Divine Right of Kings. This is particularly true of sixteenth and seventeenth century England. The leading exponents of this latter doctrine were James I, the first Stuart King, and Sir Robert Filmer. Bousset in France elaborated this theory in supporting the despotism of Louis XIV.

In his work called *The Law of Free Monarchies*, James I gives a clear exposition of this doctrine. He claims that the king has derived

* *Romans* 13 : 1. It was conveniently forgotten that the same scriptures say that 'we ought to obey God rather than man.' (Acts 5 : 29)

his authority directly from God. Therefore, he is above the people as well as above the law. He is subject to God and his conscience alone. He owes no legal obligation to the people. The only obligation that he has is a moral obligation to God to govern the people well. Kings make laws; laws do not make kings. The king 'is master over every person, having power over life and death'. James I assumes throughout his work that kings are wise and good but that the subjects are weak and ignorant. A king, he declares, is a great school master for the whole land. A 'Free Monarchy' he interprets as a monarchy which is free todo what it pleases.

The Divine Right of Kings

Even if the king be wicked, the subject has no right to rebel against him. To rebel against the king is to rebel against God Himself, for the king is God's chosen vessel. A wicked king is to be regarded as a plague for people's sins sent by God. Therefore, it is unlawful to shake off such a burden. The only check on a bad king is his fear of punishment in the life after death, which is sure to be terrible. To quote the forcible words of James I: 'Kings are justly called gods; for they exercise a manner of resemblance of divine power upon earth.' 'As it is atheism and blasphemy to dispute what God can do, so it is presumption and high contempt in a subject to dispute what a king can do or to say that a king cannot do this or that.' 'Kings are breathing images of God upon earth.'

The salient features of the doctrine of the Divine Right of Kings are:

(1) Monarchy is divinely ordained;
(2) Hereditary right is indefeasible;
(3) Kings are accountable to God alone; and
(4) Resistance to a lawful king is sin. (*G. P. Gooch*)

It is more than likely that even the supporters of this doctrine did not fully believe in all its extravagant claims. The chief reason for advocating it in the Middle Ages was that it might serve as a bulwark against the audacious claims of the Pope and that it might strengthen the State against the inroads of militant catholicism. In supporting it, people failed to consider the danger of the king becoming a tyrant. Later, the theory was used against the growing political consciousness of the people and the rise of democratic ideas, and was made to support royal despotism. It was not until the end of the eighteenth century that it was rejected as unsound in theory and dangerous in practice. In countries like Austria, Germany, and Russia it lasted

for a still longer time.

To-day both the Divine Origin Theory and the Divine Right of Kings are without supporters among political thinkers. To refute them in great detail is to flog a dead horse. It is sufficient to say that the general consensus is that although human institutions like the family and the State are in accordance with a divine plan or purpose, the State is an historical growth, the outcome of the political strivings of men. The causes of the decline of the theory, as brought out by Gilchrist, are:

'(1) The rise of the contract theory, with the emphasis it gave to consent;

(2) The rise to supremacy of the temporal as distinct from the spiritual power, or, in other words, the separation of church and state;

(3) The actual refutation of the absolutism which the theory supported by the growth of democracy.'

As a doctrine of political philosophy, it received its death blow at the hands of Grotius, Hobbes, and Locke. Yet the Divine Origin Theory had certain values, some of which are suggestive:

(1) At a time when man was emerging from semi-civilised conditions and was not accustomed to obedience to a secular authority or to a self-imposed law, the doctrine of the Divine origin of the State must have been a powerful factor in preserving order. It was a bulwark against anarchy and did much to strengthen the respect of man for person, property, and government.

(2) It may be interpreted to mean that the instinct for order and discipline is deep-seated in man and that it reveals itself in political organisation.

(3) Its supreme value lies in the fact that it indirectly emphasises the moral basis of the political order. It emphasises the fact that government is for the good of the governed. Even the absolute ruler owes a moral accountability to God for the way in which he exercises his authority.

2. The Social Contract Theory

I. Statement of the Theory. This theory holds that the State is the result of a deliberate and voluntary agreement on the part of primitive men emerging from a state of nature. It assumes that there was a period in human history when there was no State at all and no political law. This pre-civil or pre-political period is regarded by

some writers as pre-social as well. In this state of nature the only law which governed human relations was the law of nature. Advocates of the Social Contract Theory are not agreed upon what exactly this law of nature was. The state of nature was either too idyllic to last long or too inconvenient and unbearable. Hence men in this primitive state soon abandoned the state of nature and set up a political society through the instrumentality of a covenant. As a result of the covenant each man lost his natural liberty in part or in whole, and in its place he obtained the security and protection of the State provided by political law.

The contract is interpreted in various ways by its advocates. According to some, it is responsible for the institution of civil society alone, while others regard it, in addition, as an agreement between the rulers and their subjects, resulting in the institution of a particular government. The first type of contract is known as the social contract, the second as the political or governmental contract. The contracting parties of the original, or the social. contract are the individuals themselves, emerging from the state of nature agreeing with one another and with all. The parties to the second, or the governmental, contract are the people in their corporate capacity on the one hand, and an agent or ruler on the other. A further difference which we find among the advocates of the Social Contract Theory is that while some regard it as an actual historical fact, others consider it as an historical fiction which conveys philosophical truth. An example of the former conception is found in Locke while Kant illustrates the latter conception. To Kant the contract is merely an 'idea of reason'. One other difference to be noted among the propounders of the theory is the varied use to which they put it. Hobbes uses it to justify royal absolutism: Locke to support constitutional government or limited monarchy: Rousseau to uphold the doctrine of popular sovereignty (*45 : 13*). On the whole, the theory has been used to justify the conception that governmental authority, if it is to be legitimate, must rest ultimately on the consent of the governed. The weight of its influence has in general been in the direction of safeguarding the rights and liberties of the people and of checking the arbitrariness of rulers. It has also engendered a general irreverence towards the State because of its assumption that the State is an artificial creation and that governmental authority is a restraint upon man's natural freedom.

II. History of the Theory. The theory is almost as old as politi-

cal speculation itself. In the Greek times, it was first found among the Sophists, who were professional teachers of wisdom. They did not belong to a single school of thought. Never the less, as a class, they regarded the State as an artificial creation built upon man's self-interest. Political control they considered essentially selfish in aim. The State, they said, was a hindrance to man's self-realisation and was opposed to the life of nature. It was the result of a contract.

Plato and Aristotle, who represented the summit of Greek political philosophy, repudiated the Social Contract Theory. To them the State was natural and neeessary. The Epicureans who followed revived the Social Contract conception. The key-word of their teaching was self-interest and they based the State upon that. They explained social and legal relations as resting wholly upon individual self-interest. Obedience to law was justified only when it protected the individual against personal injury. Justice to them did not mean anything more than some convention for mutual advantage. Political life, they said, was burdensome and incompatible with the repose of spirit necessary for an ideal existence. In all these views of the Epicureans we see a fore-shadowing of the later Social Contract Theory. The Stoics, who were the contemporaries of the Epicureans and in many ways represented an opposite type of thinking, contributed to the contract theory, the conception of natural law to be interpreted by man's reason. This conception of the natural law was later incorporated in Roman jurisprudence.

In the Roman law the conception of the contract played a very conspicuous part. The people were regarded as the ultimate repositories of political authority. But the idea of contract taught by the Romans was not the social contract of later writers; it was only a governmental contract. It was a contract between the people and government officials. Once officials were chosen, they had complete power and the people had no right to withdraw it. Thus no revolution was justifiable. In this respect we find that the Roman theory was more like the theory of Hobbes than like that of Locke. The Romans did not develop the idea that the State itself owed its existence to convention or agreement. The State was never viewed as anything so artificial as that. A recent writer observes: 'In political discussions, the theory of social contract became significant during and after the Middle Ages (*1 : 22*).'

Among English writers, the first one to give a definite statement of the contract theory was Richard Hooker (1554-1600) in his *Laws of*

Ecclesiastical Polity published in 1594. In the tenth section of the first book, Hooker outlines the Social Contract Theory. As regards the law of nature and life of man in the state of nature, he adopts a middle course between the gloomy view taken by Hobbes and the roseate picture drawn by Rousseau in his earlier writings. The central question which the author faces is whether subjects should obey a political authority which they themselves have not set up. His answer is that the original contract obliges people to obedience and that if it is to be revoked, it can be done only by universal agreement. Since universal, agreement is practically impossible to attain, disobedience to political authority is nearly always wrong. Thus Hooker's position anticipates that of Hobbes. In spite of his advocacy of the contract theory, Hooker does not consider society to be purely artificial and contractual. The contract is to him a part of man's instinct and not the result of despair. 'From the stand point of psychology and of historical truth Hooker is here far in advance of Hobbes with his grossly mechanical interpretation of the facts of community (*6 : 35*).'

The Social Contract Theory of Hobbes, Locke, and Rousseau is considered separately in Chapter V. After Rousseau the theory gradually withered away. Kant and his disciple Fichte used it at some length. Kant used the contractual conception to measure the justness of laws. Fichte's ideas on the subject were not always consistent. In his earlier writings at any rate he advanced the idea that man was subject to the moral law alone and that therefore he could terminate the contract at any time he pleased. Edmund Burke dismissed the theory as an oversimplified fiction. In the world of practical affairs the Social Contract Theory of Rousseau influenced the French Revolution, and the theory in general had its effect upon the makers of the American constitution.

The nineteenth century marked the decline and downfall of the contract notion. This was brought about largely by the historical and scientific attitude of the period which replaced the former speculative approach. Montesquieu in France gave an impetus to the historical method in politics, and Darwin and his followers helped thinkers to understand and interpret institutions in the light of evolution.

III. Criticism of the Social Contract Theory. The Social Contract Theory has been attacked from three different angles, the historical, The legal, and the philosophical or rational.

In the words of Kranenburg, it employs too much deductive and

too little inductive reasoning (*45 : 8*).'

(*a*) *Historical:*

(1) The most obvious criticism that suggests itself is that the theory has no basis in fact. To assume that primitive men came together at some particular time and established a political society by means of a contract is to read history backwards. The idea is too advanced for primitive man. No one has yet been able to give a single instance of a State coming into being as the result of a deliberate and voluntary agreement between individuals emerging from a state of nature. It is true that the Mayflower Compact (1620), the Providence Agreement (1636), and the like are given as instances of the historicity of the social contract. But it must be remembered that the men who formed these contracts were not emerging from a state of nature. They had been living in the State elsewhere, were well acquainted with political organisations there, and were simply transplanting to new lands, institutions and ideas with which they were already familiar.

(2) There have been historical examples of governmental or political contracts, but such contracts are contracts among people already living in the civil state. They do not by any means explain the historical origin of the State. They only define the rights and duties of the rulers and subjects. Governmental contract is a fact; social contract is a fiction.

(3) The theory assumes that primitive man was much of an individualist. It assumes that he was a free man who could enter into voluntary agreements with other free men. This is not what research into early times shows. Early law was more communal than individual. The individual was of little importance. The family was the unit. Property was held in common. Law took the form of customs. The individual had his prescribed place in society. In these circumstances the free contracting of individuals with one another in so important a matter as the institution of the State is an absurdity.

(*b*) *Legal:*

(1) Even if we assume for thes ake of argument that primitive

man had advanced far enough in his social consciousness to enter into a contract, the fact remains that such a contract has no legal binding force whatever. A contract, in order to be valid, requires the force or sanction of the State. But for this contract there is no such sanction, for it precedes and does not follow, the establishment of State. In the words of T. H. Green, 'The covenant by which a civil power is for the time constituted cannot be a valid covenant. The men making it are not in a position to make a valid covenant at all (*29 : 64*).' There is no 'imponent' behind it.

(2) Thus, if the original contract has no legal meaning and is invalid, all subsequent contracts based upon it are equally invalid, and the rights derived from it have no legal foundation.

(3) A contract has binding effect upon only those who accept it voluntarily. But the social contract is supposed to bind generations of men who have had no say in the matter at all. If the fathers eat sour grapes, why should their children's teeth be set on edge ? In reply to it, it may be argued as is done by Locke, that residence in a State constitutes tacit assent to the original contract. This is a patent evasion of the difficulty. Strictly speaking, the State should expire with the death of the original parties and every new generation should enter into a fresh contract. It needs hardly any demonstration to prove that such a state of affairs would undermine political authority and even result in the dissolution of the State itself.

(c) *Philosophical :*

Philosophical objections to this Social Contract Theory are even more important than the historical and legal objections. As said already, several of the contract supporters admit that the contract notion is only a historical fiction and yet they use it in order to convey certain philosophical principles. The objections are —

(1) The theory assumes that the relation between the individual and the State is a voluntary one. This is a position which will not stand careful scrutiny. We are members of a state in the same way in which we are members of a family. Membership of a child in the family and its duty of

obedience to its parents do not rest upon the basis of consent. We are born in the State, and we do not ordinarily choose it; and if later on we change our citizenship we are still in the State. The State is not an artificial creation of man. Membership in it is not voluntary. If the State were a voluntary organisation like a company or firm, the individual would be at liberty to enter or leave at will. The obligations of the citizen to the State are not contractual at all. If the literal consent of every citizen were the justification for State action, State life would become an impossibility, for there is hardly any matter upon which we can get unanimous agreement. An individualist like Spencer who starts out with the idea that literal consent is the only basis of political obligation virtually admits the futility of such a position. The contract supporters try to overcome this difficulty by assuming that a unanimous consent is necessary for the original contract, but that majority vote will suffice after that. This is illogical. If we begin with unanimous consent, should we not adhere to it throughout? To use the oft-quoted and striking words of Edmund Burke: 'The State ought not to be considered as nothing better than a partnership agreement in a trade of pepper and coffee, calico or tobacco, or some other such low concern, to be taken up for a little temporary interest, and to be dissolved by the fancy of the parties.' If the State is a partnership at all, it is a partnership in a higher and more permanent sense. To quote Burke again: 'It is a partnership in all science, a partnership in all art, a partnership in every virtue, and in all perfection. As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born.' Thus, the individual is not a member of the State through voluntary association. He is a born member of it. His obligations 'do not rest upon covenant or consent, but rather upon the general interests or necessities of society, or upon grounds of utility (*22: 113*).'

(2) The entire conception of the state of nature and of the laws of nature is unsound. It assumes that whatever preceded

the institution of the State is 'natural' and that whatever has followed it (including the institution of the State) is artificial. There is no warrant for dividing history into two parts with a hatchet, so to speak. Civilisation is as natural to-day as was barbarism in the past. Man is a part of nature and the State is the highest expression of his nature. The State is a growth and not a manufacture. 'Men do not make a bargain consciously; the agreement exists because of their nature (*28 : 69*).'

Even if we grant that there was a state of nature governed by laws of nature, meaning thereby laws of inherent morality, the setting up of a State in such a situation is not a progressive step, but the opposite. To exchange laws of inward morality for the force of the State is a backward step. As Green puts it: 'A society governed by such a law as a law of nature, *i.e.* with no imponent but man's consciousness, would have been one from which political society would have been a decline, one in which there could have been no motive to the establishment of civil government (*28 : 72*).'

Furthermore, if the state of nature is one in which a contract could be formed, it must have been a state where there was a consciousness of a common good, implying the ideas of social authority and individual obligation. But such a one, we claim, does not materially differ from a civil or political state. It is virtually, though not in name, a political state. The necessary elements constituting a political society are already present there.

(3) The Social Contract Theory implies a false notion of rights. T. H. Green aptly remarks: 'The real flaw in the theory of contract is not that it is unhistorical, but that it implies the possibility of rights and obligations independently of society.' According to any sound view of rights, the basis of rights is *social recognition, i.e.*, recognition on the part of society of a common good of which the individual good is an intrinsic part. Right can exist only among persons, in the moral sense of persons, *i.e.*, persons possessing a rational will. But the contract theory assumes that we can have rights even in a pre-social state. Such rights, we contend, are not rights at all. They are mere powers. To quote Green again: 'Natural right as a right in a state of nature

which is not a state of society, is a contradiction. There can be no right without a consciousness of common interest on the part of members of a society (*29 : 48*).'

IV. Elements of Truth in the Theory. Although as a theory explaining the origin of the State or the right relations between man and man in society, the Social Contract Theory is defective and finds no support to-day, it contains certain elements of truth. If we are to understand the theory properly, as it was elaborated in the seventeenth and eighteenth centuries especially, we should know the practical aim which impelled its adherents to enunciate it, namely, to give a more satisfactory and human explanation of the fact of political authority and the duty of obedience rather than explanations based upon divine fiat. In the place of the Divine Right Theory which called upon subjects to render unquestioning obedience to the 'powers that be', the Social Contract Theory laid down the fundamental truth that obedience rested upon the consent of the governed and that the sovereign had no right to act arbitrarily. In working out this truth, the Social Contract Theory served as the basis for the modern democracy. It emphasised 'the importance of the individual, the possibility of modifying political institutions by direct human effort, and the fact that ultimate political authority lies, at least potentially, in the people (*24 : 85*)'. Thus it was that 'Advocates of freedom preferred it; for it suggested ways of limiting the claims of arbitrary authority. All who aspired to philosophy preferred it; for a contract can be discussed, criticised, and amended, whilst the fiat of Heaven cannot. And if we set aside its peculiar historical context, it is still attractive; for it appeals to one important aspect of human experience (*54 : 43*).'

3. The Force Theory

According to this theory the State is the result of superior physical force; it originates in the subjugation of the weaker by the stronger. It is natural to suppose that in primitive times the man of exceptional physical strength was able to overawe his fellowmen and to exercise some kind of authority over them*. The same is probably true also of superior tribes and clans in their relationships to other tribes and clans. On the basis of this supposition, advocates of the force theory contend that all States have come into being through physical coercion or compulsion.

In *The State*, Oppenheimer, who is a keen advocate of this theory,

* Voltaire's aphorism is : *'the first king was a fortunate warrior'*.

traces the origin of the State through various stages. Jenks, who is another prominent supporter of the theory, in his *History of Politics*, holds that there is not the slightest difficulty in proving that all political communities of the modern type owe their existence to successful warfare. According to this theory, it is war that begets the State. Advocates of the theory argue that what they regard to be fundamental features of modern political society—military allegiance and territorial character—are based on the relation between the war chief and his followers and on conquest which brings under the authority of a single ruler people of different countries and of different races.

Some writers use the term 'force' so very broadly as to include not only physical prowess but also power derived from intellectual and religious factors.

Like the Divine Origin and the Social Contract theories, this theory is advocated both as an explanation of the historical origin of the State and as a rational justification of the State to be; and like them, also it is defective on both counts. In its practical form, it reduces itself to the position that government is the outcome of human aggression. Such a view is found in the earlier works of Herbert Spencer where he says, 'Government is the offspring of evil, bearing about it the marks of its parentage.' We admit that force must have been an important factor in the evolution of the State, but to regard it as the one factor is a clear mistake. Several other factors must have entered into the composition of early political societies. The State must have grown as much by voluntary amalgamation as by force and conquest. After conquest the State must have grown more as a result of conciliation and agreement than as a result of coercion. The force theory minimises the element of co-operation and other such peaceful agencies which must have played an important part in the evolution of the State.

Force is an essential element of the State both for internal unity and for security against external attack. Without the element of force, the State would become a prey of disruptive factors and would soon cease to be.* But force alone cannot account for the historical origin of the State or for its continuance in modern times. 'Might without right can at best be only temporary, might with right is a permanent basis for the State (*28 : 79.*')

* Engels, the colleague of Marx, wrote: 'Without force and iron ruthlessness, nothing is achieved in history.'

The Force Theory, like the Social Contract Theory, has been used for various purposes. Some have argued that since the State is the outcome of force, people should obey it absolutely. Such a position, seems altogether illogical. As Rousseau has pointed out clearly, (*67 : Bk. I, Ch.III*) the right of the strongest is no right at all. Right based upon might lasts only as long as might lasts. But what kind of right is that which perishes when force fails ? To quote Rousseau again, 'Force is a physical power....To yield to force is an act of necessity, not of will—at the most, an act of prudence.' Some of the early Church Fathers also used the theory, their purpose being to discredit the State. They argued that the State was based on brute force, while the Church was the work of God and hence superior. The individualists, as well as the socialists, have also employed the Force Theory to support their respective doctrines. The individualist argument is that just as the State is the result of superior strength, so within society itself the race should go to the swiftest. This means unrestricted competition and unlimited scope for individual efforts. The socialists, attack this argument on the ground that individualism means an improper use of force and that the State, by means of its superior force, should check the exploitation of the weaker by the stronger and mete out justice to the workers.

4. The Patriarchal and Matriarchal Theories

While there is general agreement that the origin of the State should be understood in terms of evolution, there is considerable difference of opinion as to the stages in this evolution. It is in this connection that we came across the patriarchal and matriarchal theories.

The Patriarchal Theory

Sir Henry Maine is a chief advocate of the patriarchal theory. He defines it as 'the theory of the origin of society in separate families, held together by the authority and protection of the eldest male descendant'. He believes that the State is the family writ large. He assumes that the original group consisted of a man and his wife and children and that this family soon gave rise to several families and that the original father or the eldest male descendant became the protector and ruler of this common patriarchal family. Relationship is traced in such a family through males, and from the same ancestor. The State is simply a further development of the patriarchal family. To state this development in Maine's own words, "The elementary group is the family connected by common subjection to the highest male ascendant. The aggregation of families forms the Gens or House. The aggregation

of Houses makes the Tribe. The aggregation of Tribes constitutes the Commonwealth *(28 : 85)*.'

The theory rests on three fundamental assumptions :

(1) That the patriarchal family was based on permanent marriages and kin relationships.

(2) That the State is a collection of persons descended from the progenitor of an original family, and

(3) That the ultimate source of all political authority is to be found in the extensive and unlimited power exercised by the head of the patriarchal family, who on his death-bed bequeathed to his successor all the legal rights that he enjoyed.

Evidence in Support of the Theory. In support of the theory, its advocates adduce the family history of the Hebrews, of the Greeks and Romans, and of the Aryans of India. Among the Hebrews the eldest male parent was absolutely supreme and exercised almost despotic power over his dependents. He held the possessions of the family in a representative rather than in a proprietary manner. The Athenians had their 'families' and 'brotherhoods,' and in Rome the '*patria potestas*,' the power of the father, 'gave the head of the household almost unlimited authority over its members.'* In India, too, where the joint family system prevails, large members are included in a single household. It includes the father and mother, married sons and their families, unmarried sons and unmarried daughters, widows, and aged dependents. Even second and third cousins are often described as brothers. Adopting such a family as the basis, the patriarchal theory has supposed that in course of time the enlarged family became a civil community and the father or the eldest male member, the king or chief.

Criticisms of the Theory. (1) Modern research into the history of early man shows that the patriarchal system was by no means universal. There are some who contend that the matriarchal system, where relationship is traced through the mother, was earlier in point of time. McLennan, who is a staunch advocate of the matriarchal

* Over his wife, children, and their descendants, says Sidgwick, they exercised such an absolute despotism that the individual members had no 'separate juridical existence at all. This complete control within the family carried with it a correspondingly extensive responsibility.' But this control of the *Paterfamilias* over his estate underwent a striking limitation after death. *(Development of European Polity, p. 47)*

theory, claims that polyandry and the matriarchal family were the primary social facts and that polyandry later developed into the monogamous family, and the matriarchal family, into the patriarchal state.

(2) Jenks, who is another strong supporter of the matriarchal theory, asserts that the process by which families expand into clans and clans into tribes according to Maine's conception is, in fact, the reverse (*22 : 118*). According to Jenks, the tribe is the earliest and the primary group, then comes the clan, and finally comes the family. In support of his contention Jenks gives the examples of certain societies among primitive races such as those of Australia and the Malay Archipelago.

(3) The existence of polyandry and transient marriage relationships and kinship through females in uncivilised communities shows that the patriarchal family did not exist continuously.

(4) The most serious criticism of the theory is that it does not account for the origin of the State. It is simply a speculation into the beginnings of early society, particularly those of the family.

The Matriarchal Theory

This theory is suggested by the institutions of savages still in existence such as the aborigines of Australia and certain communities in India. Savage life discloses a type of society which appears to be more primitive than the patriarchal society. The fundamental features of this society are:

(1) Transient marriage relationships,

(2) Female kinship,

(3) Maternal authority, and

(4) Succession of only females to property and power.

Some writers on the matriarchal theory consider all these four features as essential while others mean by the theory only 'mother-right' and 'mother-relationship', and not 'mother rule'. It is the latter of these two views which seems more reasonable.

According to the matriarchal theory, in the above restricted sense, the matriarchal family precedes the patriarchal family. It is natural to suppose that polyandry and transient marriage relationships were more common in primitive society than monogamy or polygamy. The Veemah marriage also existed, according to which the husband is incorporated into his wife's family. Under such circumstances descent is traced through the mother; for, as Jenks points out, motherhood in such cases is a fact, while paternity is only an opinion. 'The woman

here,' says MacIver, 'is regarded as the agent of transmission, not the active wielder or even the participant of power.' The system 'gave the woman, the wife and mother, a *social* rather than a *personal* standing (*55 : 29*)'. It was at a later stage that 'mother right' gave place to the patriarchal society 'through the adoption of settled pastoral and agricultural habits in place of the purely wandering or hunting life of primitive man.' (*51 : 41*)

Criticism :

(1) Although examples can be found of the polyandrous type of society in various parts of the world, there is no proof that it was universal or necessary to the beginning of society.

(2) Other forces and elements besides patriarchal and matriarchal relationships must have entered into the process of political organisation.

(3) Both the patriarchal and matriarchal theories undertake to perform too big a task. They seek to inquire into the beginning of human society. Centuries must separate the most archaic society which we can picture to ourselves from the actual origin of mankind.

(4) Both theories are more sociological than political. They seek to explain the origin of the family, rather than that of the State. The nature of the family and that of the State are different in essence, organisation, functions, and purpose.

The conclusion to which we are led with regard to both the patriarchal and matriarchal theories, can best be summed up in the words of Leacock: 'No single form of the primitive family or group can be asserted. Here the matriarchal relationship, and there a patriarchal regime, is found to have been the rule, either of which may perhaps be displaced by the other. Indeed one has to admit the fact that there is no such thing as a "beginning" of human society. All that can be asserted is that in the course of time the monogamic family tended to become the dominant form, though even until to-day it has not altogether supplanted other forms of organisation.' Mr. Ruthnaswamy observes that 'there has been a parallel development (of patriarchal and matriarchal society), but the patriarchal line is thicker and longer (*68 : 18*).'

Over against the above five theories which are more or less speculative in character, is advanced the Historical or Evolutionary theory which furnishes a correct explanation of the origin of the State. According to it, the State is a historical growth or the result of a

gradual evolution. It is a continuous development. It cannot be referred back to any single point of time. As Burgess puts it: 'It is the gradual realisation...of the universal principles of human nature.' It is futile to seek to discover just one cause which will explain the origin of all States. The State must have come into existence owing to a variety of causes, some operating in one place and some in other places. Whatever it is, the State is not the deliberate creation of man any more than language is a conscious invention. Political consciousness must have taken a very long time to develop and the primitive State must have grown along with the development of this consciousness.

The Historical or Evolutionary Theory of the State

More profitable than speculation which seeks to reduce to a single theory the origin of all States, is enquiry into the factors which have gone into building of the early State. As seen already, the State must have arisen from various causes and under varying conditions. Its emergence is almost imperceptible. The chief factors which have influenced its formation are:

Factors in State Building

I. Kinship,
II. Religion, and
III. Political consciousness.

I. Kinship. There can be little doubt that social organisation had its origin in kinship. Blood relationship, either real or assumed, was the most important bond of union. It knit together clans and tribes and gave them unity and cohesion. But kin-relationship by itself could not have led to the formation of the State. People had to develop a common consciousness, common interest and common purpose. Kin-relationship must with great difficulty have given place to social relationship. 'Kinship,' says, MacIver, 'creates society and society at length creates the State.' (*55 : 33*)

The earliest kinship to be recognised was probably through the mother rather than the father. Man must have been a hunter and wanderer. Polyandry and transient marriage relationships must have been common. Yet mothers and children must have confined primarily for the sake of the security of children and because of economic necessity. As authority developed and organisation grew, men gained dominance of groups largely through physical superiority. Other factors which went to the establishment of such a patriarchal society were domestication of wild animals, increased wealth, control of

property, pursuit of pastoral industry, and the institution of slavery. Of these factors, control of wealth was probably the most important. Property had to be possessed securely and disposed of in an orderly manner. This meant the increasing social dominance of the male.

Patriarchal society was organised on the basis of kinship through males. Women came to be regarded more and more as a form of property. Wives had to be sought outside one's own group. Marriage relationships became more permanent and polygamy became common. The patriarch or the House Father had complete control over the lives and persons of his descendants in the male line. When he died authority passed to the eldest male descendant. The practice of adoption in order to continue the male line was widespread. This patriarchal community did not go on growing and developing till it became a nation. It broke up into several patriarchal groups, all recognising some form of allegiance to the original group. The heads of these groups or clans probably formed a council of elders assisting the Patriarch, who later became the tribal chieftain, and this chieftain combined military, judicial and religious authority. The rulers or chiefs were more concerned with the privileges and powers of the dominant few than with the welfare of community.

In the patriarchal society custom played a very important part, taking the place of law. As yet there was no conception of morality or a definite sense of legality. The sense of individual initiative and responsibility was altogether lacking. The patriarchal law was enforced by the Patriarch or the House Father who was both the judge and executioner. Custom governed both him and the accused. Custom was the king of men and was only gradually transformed into law. As yet there was no State in any accepted sense of the term, but some of its constituent elements were present. MacIver aptly says that it is a mistake to think 'that wherever we find a "headman" in a savage tribe we are in the presence of the State. We cannot say when or where the State begins. It is implicit in the universal tendency to leadership and subordination, but it emerges only when authority becomes government, and custom is translated into law (*55 : 42*).'

Patriarchal society differed fundamentally from modern society in the following ways (*39 : Ch. VIII*)

(1) It was *Personal*, rather than territorial. Membership in the community was based upon kinship—real or fictitious—rather than on locality. The entire group might migrate without disturbing its organisation. Early kings were kings

of their people, and not of their land.

(2) It was *Exclusive*. It had no lust for numbers. Strangers had to live outside the ancient city walls. They could be admitted into the group only by adoption or as slaves.

(3) It was *non-competitive*. Its life was based on custom. It bound all alike and fixed the scale of social duties and rewards. The idea of change or of progress was looked upon with disfavour.

(4) It was *Communal*, not necessarily communistic. It was a series of concentric groups, beginning with the single household, ascending to the village or guild, finally to the tribe or city. Interdependence rather than independence was the ideal. *Laissez faire* was wholly alien to it. It tended to repress individual effort and to restrict free play of intelligence. The freedom of patriarchal society meant the freedom of the group rather than the freedom of the individual.

The transition from patriarchal society to modern society was marked by feudalism, and patriarchal ideas long existed after the State was well developed.

II. Religion. A second important factor in the creation of social consciousness and, in turn, in the emergence of the State is early religion. As Gettell observes, kinship and religion were simply two aspects of the same thing. Common worship was even more essential than kinship in accustoming early man to authority and discipline and in developing a keen sense of social solidarity and cohesion. Those outside were regarded as strangers and even as enemies.

Patriarchal religion, says Jenks, was almost universally ancestor-worship, *i.e.*, the cult of deceased ancestors. Patriarchal man must have believed in the continual existence of his ancestor, because he continued to see him in his dreams. He offered him sacrifices and worship and he adhered to all ancestral precedents lest he should in any way offend the deceased. Thus, offering to the dead became a characteristic feature of patriarchal religion. The patriarchal meal gradually came to occupy the place of religious ceremony. Patriarchal religion was rigidly enforced on all members of the group.

Kinship and religion were so closely inter-twined that the Patriarch, who later became the tribal chief, was also the high priest. He was the head of the family (later of the tribe), the guardian and interpreter of customs, high priest, and often the magic man or the medicine man. Such a ruler was naturally looked upon with awe and reverence. He ruled with a rod of iron, and in this, religion was his

powerful ally. Despotism in those early days was not an unmixed evil. It strengthened the tribal organisation and accustomed men to authority and obligation. It was the best friend of progress and liberty in the early stages. All this explains how religion and politics went together for a long time and are not completely separated even to-day.

When the patriarchal tribe began to expand by incorporation or conquest, patriarchal religion was not quite adequate to meet the new situation. It was at this point that nature worship began. Nature worship, in the form of crude animism, was present even in primitive times. But it now appeared in a somewhat advanced form and easily mingled with ancestor-worship and 'served as a sanction for government and law. Religious and political ideas were little differentiated, and obedience to law and to authority rested largely on the belief in the divine power of the ruler and in the sacredness of immemorial institutions *(24 : 45)*.'

III. Political Consciousness. A third factor in the development of the State is the need that man felt at a very early time for order and protection, and along with it went the lust for power on the part of those who were strong and clever.

Once early man gave up his hunting and wandering habits and took to the pastoral and agricultural life, several changes took place. The population began to multiply. Contacts with neighbouring peoples increased. Wealth accumulated. The idea of property took root. The economic life advanced. All this necessitated some form of organisation which would ensure internal order and give protection to person and property. Such an organisation received further support from the need that man felt for an authoritative body to regulate social relationships such as those of the family and of marriage, as also from the need for concerted action for purposes of common defence and aggression.

The ambition for power was no doubt a strong motive in the formation of State-institutions. Military activity furnished the best opportunity for the realisation of such ambition. In some cases at least 'war begat the king'. Earlier family organisations were gradually replaced by more purely political forms. Successful war leaders became kings and nobles, and society was stratified into classes. Power passed more and more into the hands of select classes who claimed prerogatives and superior rights.

Thus kinship, religion and the need for order and protection

'contributed the organisation from which the state usually emerged (*24*)'. They necessitated some form of law and a government to enforce that law, and the State was the next step in this political evolution.

Select Readings

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4

THE HISTORICAL DEVELOPMENT OF THE STATE

THE EVOLUTION OF THE STATE

WE HAVE so far concerned ourselves with the speculative theories regarding the origin of the State and the factors which have gone into the building of the early State. We now turn our attention to the evolution of the State in historical times. Here we are on more solid ground.

1. The Early Empire in the Orient

Almost the first type of State which emerged from primitive and patriarchal conditions was the Imperial State, particularly that of the Orient. Patriarchal society did not have a large enough area or population to enable it to become a State. There probably existed loose alliances and confederacies of various tribes knit together by ties of blood, real or assumed. But these could not have produced the extended State. Conquest and domination were necessary before tribal man could accustom himself to larger loyalties and to political authority and obligation.

The warm and fertile plains of the Orient, watered by great rivers, and the plateaus of Mexico and Peru produced the earliest forms of civilisation and the earliest State. These were regions where production was plentiful with the least amount of exertion. People multiplied rapidly and soon passed from the earlier family and religious systems to the newer political order. The rapid growth of population and the enervating climate of these warm regions led to the existence of a large servile class. Those who possessed surplus wealth, leisure, and power could easily domineer over the rest and establish despotisms. Social differences and caste distinctions came into vogue. From this state of affairs there soon arose vast empires—such as the Sumerian, the Assyrian, the Persian, the Egyptian, and the Chinese—all centering around cities. With the exception of the Persian empire that attained a degree of unity and stability, these empires were loosely knit geographically, loosely organised, and their authority rested on

fear and despotism. For the most part they were merely tax-collecting and recruit-raising agencies. There was no common purpose and no common loyalty. As soon as the ruling dynasty became weak, powerful rivals contested for rule and authority. No individual liberty or true political progress was possible. The early empire was thus an unstable institution. It was at best 'a loose congeries of semi-independent States' and the imperial sceptre shifted 'not only from dynasty to dynasty, but also from city to city (*55 : 58*)'. In spite of these shortcomings, the early empire performed a great service to political evolution in accustoming man to obedience and authority.

2. The Greek City-State

The second important stage in the evolution of the State was reached in Greece. Although civilisation arose later in Greece than in the Orient, it developed much faster once it got started. The country is peculiarly fitted by its physical environment for political growth and experimentation. It is a country broken up into numerous valleys and islands by the mountains and the sea. Its natural features are varied and moderate. There are no great mountains or rivers or other natural phenomena to paralyse human activity. The Greek religion and outlook were naturalistic and the people had no awe for their gods. Since nature was not so profuse as in the tropical countries, people looked to colonisation and trade. The patriarchal clans took possession of small areas and built their village communities around hills which could be easily defended. Some of these clans were fused by conquest, peaceful union, or ties of kinships. But they never developed a national unity. Local patriotism continued to the end.

In their self-governing and self-sufficient city-states, or rather city-communities (the phrase used by MacIver), the Greeks developed a variety of political organisations. These communities contained the principle of growth. Sparta alone remained conservative and maintained 'a steady tradition of unbroken continuity in its government. In the other States the normal political evolution was from monarchy to aristocracy, from aristocracy to tyranny, and from tyranny to democracy (*2 : ch. I*).'

The Greek was passionately devoted to his city-state. The only life which mattered to him was a life of partnership in the city. 'Citizenship was a function, almost a profession (*55 : 84*).' The Greeks looked upon the city as an ethical institution. It performed multifarious functions. In fact, it was identical with the whole life of society.

It was an all-inclusive partnership. The Greeks believed that man could not attain the highest life apart from the State. The Greek outlook was social through and through.

While the Greek city-state reached a very high level of political development and individual liberty, it had many serious drawbacks. For one thing, it rested upon a foundation of slavery. For another, the Greeks could not unite and form a common whole. They never realised a common political consciousness. The city-states formed loose confederations but nothing more. Frequent wars destroyed in turn the power of the leading cities. An all-inclusive partnership within the city meant an attitude of bitter exclusiveness towards other cities and the outside world. Greece, thus weakened, fell an easy prey to Macedon and then to Rome.

3. The World Empire of Rome (25 : ch. III)

Rome began her political career as a city-state, very much like the city-states of Greece. The city-state of Rome was formed by a union of several tribes or *curiae* occupying seven easily defensible hills on the fertile plain of the Tiber. At first this city-state was not of much consequence. But her central position and her location at the head of the only important navigable river soon led her to pre-eminence. Community of religious worship was a strong bond of union between the various tribes living within her borders. In early days, her government was monarchic. The king was magistrate, monarch, and high priest all in one. The nobility, known as the Patricians, had a share in political authority. The landless, propertyless common people, known as the Plebeians, had no share at the beginning but acquired the privilege later on.

In early Rome, as in the Greek cities, the tendency was towards a democratic form of government. About 500 B.C., monarchy fell and a republic was established with two chief magistrates, who later came to be called consuls. For two centuries following the change, the patricians and the plebeians were engaged in a struggle for political control. The economic consequences of many wars intensified the struggle. Finally, the two fighting classes fused into one citizen body, having equal political and civil rights. In this process the government, too, underwent a change. Thereafter plebeian was required to be chosen as one of the two consuls.

At this point Rome began to look outside her borders, with a view to annexing territories. The geographical conditions of Italy favouring conquest over those of Greece, Rome began realisation of her

ambition with the incorporation of the neighbouring Italian States. By 90 B.C., after the Social War, which was a serious revolt of eight Italian tribes against Rome, almost all the peoples south of the Po River were granted full citizenship. This citizenship of Rome was a much more flexible and adaptable system of rights than that of Greece. As MacIver notes, 'From early times the Romans had the wit to distinguish between civil right—rights of equality before the law—and political right—rights of membership in the sovereign body (*55 : 97*).' Some cities of Italy were given civil rights but no political rights.

Soon after the conquest of Italy, Rome destroyed Carthage, her only rival in the West, and became a great naval power. A large part of the fragments of Alexander's empire came under her control. By the close of the first century B.C., almost the whole of the entire civilised western world was united in a single political system.

An effective system of centralised administrative control was developed to hold the empire together. The conquered territory was divided into provinces and over each province was set up a Roman official known as the proconsul, who had full powers in civil and political affairs. The only check which restrained him was the possibility of impeachment at home on his retirement from office. In Rome itself the republican form of government was replaced by military despotism. The emperor became all powerful. Popular assemblies ceased to have any important functions. The Senate retained prominent position, but the emperor exerted control over it by securing a dominant influence in determining its position. The emperor's decrees finally came to be recognised as law.

By the end of the second century, Roman citizenship was extended to the provinces. All members of the State were equally subject to the rule of the emperor. During this period the old theory that the ruler received his power from the people gave place to the Divine Origin Theory. Imperial authority came to be viewed as the divine origin. For a time the emperor himself was worshipped as god. Later, with the acceptance of Christianity as the State religion, the Divine Origin Theory was interpreted to mean that the emperor was the agent of God's will on earth. Thus the ancient democratic city-State became the autocratic world-empire. Emphasis was shifted from the Greek ideals of liberty, democracy, and local independence to the Roman ideals of unity, order, universal law, and cosmopolitanism.

It is to the lasting glory of Rome that she gave to the world the first well-organised and well-governed State. Her rule lasted five centuries in the West and fifteen centuries in the East. The Catholic Church modelled her organisation after the pattern of the Roman imperial system. The idea of a universal empire haunted the minds of people throughout the Middle Ages. Roman law and Roman methods of colonial and municipal administration have come down to modern times. Rome's well-structured ideals of sovereignty and citizenship and her methods for welding diverse peoples into political unity are some of her monumental achievements.

In spite of these great achievements, the Roman empire was not permanent or enduring. Among the causes that led to her decline and downfall were the sacrifice of individual liberty for the sake of securing unity, the soulless efficiency which characterised her administration, the moral depravity of the upper classes, devastating pestilences, the unsound economic basis of the empire, failure to make rules for the succession of emperors, religious disintegration, and the invasion of barbarian hordes. Though Rome fell on account of these and other causes, her influence, her name and memory, have been more powerful in death than in life. Comparing the relative contributions and limitations of Greece and Rome, Gettell aptly remarks, 'Greece developed democracy without unity; Rome secured unity without democracy (*24:59*).'

4. The Feudal State

The downfall of Rome meant the death of the 'State' in Western Europe. A long period of confusion followed. The Teutonic barbarians who invaded Rome from the north were still living in the tribal stage, not yet having conceived of strong central authority. They were lovers of local independence and individual liberty and their kings were simply successful war chiefs. The freemen had a voice in all public affairs.

When such people came into contact with the Roman political system which was characterised by order, unity, and centralisation, conflict was the inevitable result. Out of this conflict feudalism arose as a compromise—a compromise between the clan type of society represented by the Teutonic barbarians and the imperial State type represented by Romans. It is easy enough to decry feudalism and belittle its importance in the evolution of the State. It has been rightly said that it was not a system at all. But in the anarchic state into which society had fallen following the decline of Rome, it was feudal-

ism which gave the people of Europe comparative peace and protection and preserved the machinery of the State. It marked the transition from the imperialism of the Roman world to the nationalism of the modern world.

How Feudalism arose and What it Meant

On the decline of the Roman empire, the vast territories of Rome fell into the hands of powerful nobles. Each of these nobles became an authority unto himself and each by a process of 'sub-infeudation' of land created a community of his own around him. The supreme lord parcelled out his land among the tenants-in-chief, and the tenants-in-chief among the tenants, and the tenants in turn among the vassals and serfs. Thus a hierarchy was built up on the basis of holding of land. A rigid system of classes was established and the 'State' was swallowed up in the community. Services of various kinds, particularly military, were rendered to the immediate overlord, and the control of the supreme lord, or king, at the top of the social and economic ladder over the vassals and serfs at the bottom of the ladder was indirect and remote. The loyalty of each class was in the first instance to the class immediately above it. As a result of such limited loyalty, the idea of a sovereign power reigning supreme in a given territory remained foreign to the feudal period. In the place of a system of uniform and impartial law which the Romans had done so much to build up, there was a reversion to custom as law. Real political progress was impossible as long as feudal ideas prevailed. Yet feudalism was not synonymous with anarchy. It justified its existence by providing peace and protection to the people of Europe. It was based upon personal loyalty and contract. In its later stage, particularly in England where allegiance to the king took precedence of allegiance to the immediate lord, it helped the growth of the national State.

Another institution which survived the confusion following the downfall of the Roman Empire was the Christian Church. Christianity began as a humble faith among the lower classes of society, but in the course of a few centuries it reached a mighty rank, and about the year 337 A. D. the Roman Emperor Constantine was converted to Christianity. By the end of the fourth century it was the only recognised religion in the Roman world. It built its organisation on the Roman imperial model and when the Empire fell to pieces, it was able to step into its place and give Europe order and peace. During long periods of the Middle Ages, it was able to control the State. Itself became a powerful temporal authority, holding in its

possession considerable wealth, especially landed property. As Figgis remarks: 'In the Middle Ages the Church was not a State: it was the State; the State or rather the civil authority (for a separate society was not recognised) was merely the police department of the Church.'

In feudalism the Church found a valuable ally, for it was in the interest of the political aspirations of the Church that Western Europe should be kept divided with no common political superior to offer resistance to the extravagant claims of the Church. So long as there were able Popes and weak kings and emperors, and so long as the superstitious reverence of the people for ecclesiastical authority continued, authority prevailed. But from the beginning of the fourteenth century, papacy fell on evil days, and never regained the position of pride and authority which it occupied during the pontificates of Gregory VII (1073-85), and Innocent III (1198-1216). The Babylonish Captivity (1303-1373), during which time the Pope was kept as a captive in Avignon by the French king, and the Great Schism (1378-1415) which followed when there were two, and sometimes even three, rival Popes, greatly weakened the authority of the Church and diminished its prestige. The Protestant Reformation which came soon after, in effect ended the secular supremacy of the Church, and the way was prepared for national monarchies.

5. The National State of Modern Times

The Renaissance and the Reformation are generally regarded as marking the beginning of the modern period. These movements quickened the life of Western Europe, which now entered upon a period of unparalleled expansion and conspicuous achievement. In the very nature of the case, feudalism could not have lasted long. It had a useful role to play so long as conditions were unsettled and there was general disorder and confusion everywhere. But once conditions became settled and the ethnic, linguistic, religious, and territorial bonds gave people a new sense of unity, feudalism was obliged to give way to a superior order of society .

Even before the close of the Middle Ages several factors conspired to bring in the new day. The Holy Roman Empire, even in the palmiest of its days, was little more than a ghost. It had no real authority behind it. National States were coming into existence in England, France, and Spain in spite of the so-called Empire and the sway of the Pope. Cities grew and commerce developed. The pride of kings, mortified by the arrogant demands of the Popes, led to their breaking more and more away from Papal authority and making themselves

masters in their own houses. Because they desired peace and security, the people gave them their loyal support. They looked upon the king as the visible symbol of the national spirit which was beginning to capture their imagination. The use of gunpowder, the rise of national taxation, and the setting up of standing armies freed the national monarchs to a great extent from their dependence upon the feudal nobility. The Hundred Years' War and the Wars of the Roses further weakened the authority of the feudal lords and diminished their, political importance. By the close of the fifteenth century much of the feudal power was destroyed.

Thus on the eve of the Protestant Reformation the stage was well set for epoch-making political changes. The Reformers were primarily religious teachers. They waged a relentless war against the corruption of the Church, its false teachings, its secular authority, and its enormous wealth. They taught doctrines which had a profound effect not only upon man's religious life, but also upon his political relations–such doctrines as the value and dignity of every human being, the importance of the individual conscience and individual liberty, and the right of the individual to have direct access to God without the intervention of the priest. Out of such teaching there arose in the political field the modern movements of individualism and nationalism. The two powerful conceptions of the Middle Ages—the universal empire and the universal church—received a death-blow.

The immediate effect of the teaching of the Reformers was to strengthen the hands of national monarchs. All the great Reformers enjoined their followers to passive obedience to the State, and taught 'that the powers that be are ordained of God'. They held that political authority came ultimately from the will of God, and that the rulers to whom obedience was due ruled by divine right. Their teaching took root in England and in France and led to the Tudor and Stuart despotism in the former country and to the Capetian absolutism in the latter. Louis XIV of France went so far as to say, 'I am the State.' The general tendency of the Reformation teaching was to strengthen the hold of the monarchic principle in monarchic lands and the principle of aristocracy in aristocratic lands. 'In both the effect was to strengthen absolutism in the political sovereign (*17*).'

Such absolutism, however, did not remain unchallenged very long. With the growth of enlightenment and understanding and realisation of their power and importance, the common people began

to question the duty of passive obedience to governmental authorities and to demand more and more political rights and privileges. This meant a prolonged contest for political control between the king and the people. In the transition from royal absolutism to democracy the Reformation idea of personal worth played a very important part. The common man acquired a new confidence in himself and he realised the fact that government existed not for its own sake but for the good of the governed. Thus, the ultimate effect of the Reformation teaching was to further the cause of individual liberty and democracy.

Royal absolutism was no doubt necessary to weld people together and to bring order and unity out of feudal disorder and disunity. But once that object was fulfilled, there was no reason for its continuance. The democratic movement started very early in England and its progress was on the whole gradual and peaceful. In France it meant a violent revolution. In other countries, the monarchs generally yielded to the popular will and were content to remain as historic figureheads under a democratic government. The movement had taken such deep root and had worked so satisfactorily that, till recently, the democratic national State came to be regarded as the final stage in the evolution of the State. Bentham, for instance, hoped to better 'this wicked world by covering it over with Republics'.

6. The World Federation

Undoubtedly a great deal can be said in favour of the Democratic National State. It would seem reasonable to suppose that every country with a well-defined natural boundary and having a homogeneous and united people should be allowed to govern itself and claim all the rights of a sovereign State, and that the foundation of such self-governing and self-determining national State was essential to international peace and goodwill. But the history of the last century has shown that such a policy inevitably leads to rivalry, competition, and even war. Colonial empires have well-nigh destroyed the geographic and ethnic unity on which the national State is based. Scientific discoveries of recent years, greater facilities for travel and greater intercourses among the people of the world, international trade on a gigantic scale, and the world magnitude of present-day problems, all of which are causing 'the shrinkage of the world', tend to break down narrow ideas of patriotism and national sovereignty and point the way to some form of world federation. Just what form this world federation will take, the future alone can show. A world government of some sort seems inevitable. H. J. Laski, an ardent champion of World

Federation, believes that in other than purely domestic concerns, settlement in terms of common rules for all nations is becoming an increasing necessity. He further holds that the sovereignty of the State is in the process of disappearance in international affairs because it has served its purpose there. 'What the individual to-day requires is not the concept of Imperialism, but the concept of Federalism.'

In a recent book, *Union Now*, Clarence A. Streit visualises a federal union of the existing democracies. He argues that the League of Nations failed because it was a league of governments and not of peoples. Holding that the doctrine of absolute sovereignty is altogether unsuited to modern conditions, he argues for a world government of the federal type. This new organisation will regulate all the external relationships of its members, leaving only matters of domestic concern to the members. The doors will not be closed against the non-democratic countries of the world but they will be admitted into the fellowship as soon as they declare themselves to be in favour of democracy and express their willingness to live in peace with all. In the Federal Union there are to be common citizenship, common currency, common postage, common tariff, and common defence. The colonial possessions of the members will be administered by the new federal government, the sincere aim being to fit them for self-government at the earliest date possible. The broad outlines of the scheme have received the approval of Lionel Curtis and a group of people in England who have organised themselves into a union to explore practical ways of giving effect to the scheme and to bring it to the notice of responsible statesmen.

The outside world is bound to look upon this scheme as a federation of the self-righteous. Many of the countries in this group are race-ridden, aggressive, and imperialistic.

General Features of State Development

A study of the evolution of the State, as stated by Gettell, leads to five broad conclusions (*24: 65-67*).

(1) As in the case of organisations in general, the evolution of the State has been from the simple to the complex. Government has become more complex and complicated than in earlier times. But at the same time there has been an increasing unity and interdependence of Governmental organs. Different organs of the government perform different functions;

but there is a fundamental unity underlying them all. The authority of the State which was uncertain and irregular at the beginning has now become more definite and regular, so that the chances of despotic or capricious rule are steadily decreasing.

(2) The evolution of the State has meant 'the growth of political consciousness and purposeful action'. The first State came into being not through the deliberate action of man, but largely through natural causes. Man being a social animal, the organisation of some form of governmental authority to hold society together was almost natural with him. But with the evolution of the State and increasing intelligence, man was able to discover reasons for the existence of the State and mould the State according to his ideals. State authority came to be based on a more rational and stable foundation. The spread of political consciousness to the people led to the formation of democracies.

(3) As a general rule, the evolution of the State has meant the bringing together under a single state system larger areas and greater numbers of people. Among the factors which have made large states possible today are rapid means of transportation and communication, unprecedented economic development, the growth of self-governing local institutions, and the increasing respect of modern man to law and order.

(4) State development has meant the curtailment of the power of the State in certain areas and the corresponding increase of it in certain others. Religion and the State evolved together in the early stages. But, at the present time, in all civilised countries, the Church and State tend to be entirely separate, although in Nazi Germany the Church became the ecclesiastical department of the state. There is an increasing realisation of the fact that since religion and morality are primarily of an inward character, they should be subjected to the least possible amount of direct State control. At the same time the State should do all that it can to make the religious and moral life possible for the individual. Similarly, the personal life of the individual is becoming more and more free from State supervision. It is generally admitted that the State ought

not to interfere with such matters as domestic life and personal likes and dislikes as regards food, clothing, fashion, and the like, so long as such freedom is not contrary to public order and safety or laws of decency.

On the other hand, there is an increasing demand for State action in the sphere of public welfare, where individuals cannot or will not help themselves. Thus education, sanitation, the care of defectives, the punishment and prevention of crime are justified by all modern States. The general tendency to-day seems to be in the direction of extending State action, so long as it is not the fiat of the executive, but has behind it the united support of the people.

(5) In many ways, the most significant development has been the increasing measure of compromise which has been worked out between the sovereignty of the State and individual liberty. Modern totalitarian States are, however, an exception to the rule. Rigid enforcement of customs and despotic rule were necessary in the early days to make primitive man understand the importance of law and authority. But after this purpose was accomplished, they became rather a hindrance to individual liberty and the unity of the State. The Oriental empires kept up a despotic rule even after it had served its purpose. The Greek city-states developed individual liberty, but sacrificed unity. Rome perfected her organisation, but crushed freedom. It fell to the lot of the Teutons to work out a compromise between individual liberty and State sovereignty in the form of the modern democratic national State. 'By the principles of local self-government and representation, an organisation which secures unity in common affairs without sacrificing individual liberty is made possible, and democracy over large areas is at last secured.' The problem of the future is to keep under changing conditions the balance between sovereignty and liberty, 'and no two modern States are agreed as to what is the proper adjustment, or how best to secure it.'

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5

THE SOCIAL CONTRACT THEORY OF HOBBES, LOCKE, AND ROUSSEAU

EVEN THOSE who possess only an elementary knowledge of political science, know that the names of Hobbes (1588-1679), Locke (1632-1704), and Rousseau (1712-1778) are inextricably interwoven with the social contract theory. Hobbes and Locke in England and Rousseau in France gave this theory its final form. We shall briefly deal with the views of these writers in order to understand the full significance of the social contract theory.

(a) THE STATE OF NATURE AND THE LAW OF NATURE

Hobbes. Hobbes presents a gloomy view of the state of nature. Rousseau, in his essay on *Inequality*, pictures this state to be a period of idyllic happiness, although he modifies this view in his later *Social Contract.* Locke takes a middle position. In other words, Hobbes' view of the state of nature is that it is unbearable, Locke's view is that t is inconvenient, while Rousseau's view is that it is a period of peace and blessedness. According to Hobbes, life of man in the state of nature is one of constant warfare on account of the essentially selfish nature of man. In his own forcible words, the life of man, is 'solitary, poor, nasty, brutish, and short'. 'Every man is enemy to every man (*35*).' Man seeks pleasure, and to ensure pleasure he wants power over others.* But he is not able to assert power over others, since, according to Hobbes, the bodily and mental powers of natural man are nearly alike. Hence men stand in natural fear of each other. From this state of fear there arises a state of constant warfare. This does not mean that men actually fight with one another all the time, but that the will to contend is ever present. In such a state there is no place

* In the words of Kranenburg, 'fear, according to Hobbes, is the most power- ful motive in human consciousness and it is therefore fear which drives men to form states and government' (*45*).'

for industry. 'Kill whom you can, take what you can' is the order of the day. There is no law to constrain such actions. Hobbes is not guilty of assuming that such a state of nature is one from which men actually started. All that he is concerned to show is that it is a state into which a country may lapse when there is no settled government for any length of time.

The Social Contract writers assumed that there were laws of nature in the state of nature, but they are not agreed on the nature or basis of these laws. To Hobbes, laws of nature are laws of prudence or expediency, while to Locke they are laws of morality implanted in the human conscience. Hobbes plainly tells us that one's natural rights are one's natural powers. In the natural state, he says, there can be no morality and no consciousness of obligation. These are possible only after the establishment of law and government. Until laws exist all actions are equally good and right. The 'right of nature' is 'the liberty each man hath to preserve his own life'. The first law of nature is that everybody should aim at securing peace. The second law is that men should be willing, in concert with others, to give up their natural rights. The third law is that men should keep their contracts. The fourth and the last law is that men should show gratitude or return beneficence for beneficence. Duty in Hobbes' system, says Hallowell, coincides with self-interest.

Locke. The views of Locke on the state of nature and the laws of nature are very different. The state of nature to him is not a state of war. It is 'a state of peace, goodwill, mutual assistance, and preservation'. It is a state of liberty, but not of licence. The majority of people in this state obey the law of nature, *i.e.* the law of inward morality. But there are a few recalcitrants who cause inconvenience to the rest. Consequently the peaceable people are obliged to take the law into their own hands, and this is always irksome to the average man who wants to be left free to mind his own business. Besides, men are not good judges in their own cases. Thus the only disadvantage of the state of nature is that there is in it no recognised system of law and justice.* To rectify this deficiency men abandon the state of nature and enter into a civil society by means of a contract. This view

*According to Locke, the three lacks in the state of nature are :

1. 'an established, settled, known law';
2. a definite and impartial judge; and
3. 'power to back and support the sentence when right, and to give it due execution.'

of Locke's is far more unreal than that of Hobbes.

Rousseau. Rousseau's picture of the natural man in his *Discourse on Inequality*, is that of a 'noble savage'. Men in the state of nature are equal, self-sufficient, and contented. They live a life of idyllic happiness and primitive simplicity. But, with the rise of civilisation, inequality comes into being. Art and Sciences arise and private property is established. Division of labour, too, comes into existence. All this necessitates the establishment of civil society. The State is thus an evil, but is rendered necessary by the inequalities among men. In his *Social Contract,* Rousseau takes a modified view of the civil state and believes that the advantages of the civil state are greater than those of the natural state. In his own words : 'What man loses by the social contract is his natural liberty and an unlimited right to all which attracts him and which he can obtain ; what he gains is civil liberty and the property of what he possesses. To avoid error in the reckonings we must carefully distinguish natural liberty, which has no bounds but the powers of the individual, from the civil liberty which is limited by the general will ; and possession, which is only the effect of force on the right of the first occupant, from property, which can only be founded on a positive title (*67 : Bk I. Ch. VIII*)'.

(b) Nature of the Contract

Hobbes. Hobbes posits one contract : the original or social contract ; Locke posits two contracts : the social and governmental ; and Rousseau posits one. While Hobbes speaks of a contract, it is of no consequence to him whether government really originated in the form of a contract or not. He is more or less aware that it is a historical fiction, but a historical fiction which conveys a philosophical truth. It is simply a device to show that government is not mere force, but in some respects rests on the will of the people. Locke, on the other hand, regards the contract as an actual historical fact. He thinks that there was a time when people did meet together and set up a government.

The contract, as conceived by Hobbes is between the people themselves who emerge from a state of nature. It is not between the people on the one hand and the sovereign on the other. It is a contract among the people themselves to set up a ruler. It is 'as if every man should say to every man, I authorise, and give up my right of

governing myself to this man or this assembly of men, on condition that thou give up thy right to him and authorise all his actions in like manner (*35 : Part II, Ch. 17*).'

It is an absolute surrender of all of one's natural rights to the sovereign, although Hobbes does make some qualifications later on. The sovereign himself is not a party to the contract, but is a result of it. He is absolute. Once powers are conferred on him by the people, they cannot be withdrawn from him. Therefore, people have no right of revolution. The contract which is responsible for the institution of civil society is equally responsible for the establishment of government as well, for Hobbes makes no distinction between the State and government. The consequence of positing one and only one contract is that when a government is overthrown, the State also goes to pieces and society returns to anarchy, which is an illogical position to take. Locke corrects this mistake by positing two contracts. This two-fold contract is only implicit and not explicit.

Locke. By a first contract civil society is set up and by a second contract people get a government. The natural inference is that the first contract is among the people themselves and the second between the people in their corporate capacity on the one hand, and the ruler on the other. To Hobbes, as seen already, it is the setting up of a government that brings civil society into existence. To Locke setting up a government is a secondary transaction and the dissolution of the government does not mean dissolution of civil society. All that it means is that society will have to set up another government in its place. According to Locke, the surrender of natural right is not complete. People give up certain of their natural rights to a common authority in order that the remaining rights may be kept intact. When the ruler fails to maintain these rights, people are justified in overthrowing him and setting up a new government. In this way, Locke makes his theory the basis of limited monarchy, his object being to uphold the Bloodless Revolution of 1688. To Locke, then, the contract is a limited bargain. Thus in the chapter on property, he says that the government should take only what is necessary to carry on its business. It has not the power to take any thing more without the owner's consent. This is quite an unreal view of government. Legislative power is not absolute.

Rousseau. According to Rousseau the contract is between the individuals in their personal capacity and the individuals in their corporate capacity. A, B, C, D, etc. surrender all their natural rights to

the collective whole A+B+C+D, etc. No one is a loser; on the contrary, everybody is a gainer, for when any one is attacked the whole society comes to his rescue. Each person in the state possesses an equal and inalienable portion of the sovereignty of the whole. In Rousseau's own words: 'Each of us puts his person and all his power in common under the supreme direction of the general will, and in our corporate capacity we receive each member as an indivisible part of the whole.' Each man giving himself to all, gives himself to none, and remains as free as before. Rousseau does not believe that the contract is an actual historical occurrence.

(c) Sovereignty

Hobbes. Hobbes holds that men in the state of nature are simply a multitude of unconnected and warring individuals. Hence the problem which faces Hobbes is, how can a multitude of such individuals form a single body with a single will? The solution to it he finds in the social contract, by virtue of which a sovereign is set up with a *single will*, who will govern society continually. This single will takes the place of the individual will and at the same time represents them, in accordance with the terms of the contract.

As to the way in which the sovereign 'represents' the people, Hobbes avails himself of the legal distinction between a natural person and an artificial person. A corporate body endowed with rights and obligations is called an artificial person, or *persona ficta*. Such a body can act only through an agent or representative who represents the whole body. Hobbes calls this agent or representative the artificial person. Applying this idea to the social contract, Hobbes says that if the separate wills appoint one and the same person as their agent (and Hobbes maintains that this is what they do), we get a single will. The agent speaks and acts for the many wills. In the second place, we may call this agent a *feigned* person. What is done by my agent is done by myself. I am responsible for everything that he does. I must accept all liability and responsibility. Likewise, whatever the sovereign does the people do in him and therefore he cannot act unrepresentatively. This is the only way, according to Hobbes, in which society can hold together. 'For it is the unity of the representer and not the unity of the represented, that makes the person one.' The unity resides in the common agent or representative and not in the individuals. Thus we find that in the theory of Hobbes

there is a *substitution* of one will for many wills; but when we come to Rousseau, we find that there is a *transformation* and *transmutation* of many wills into a common or general will.

The important point to note is that with whomsoever sovereignty rests, it must be absolute, indivisible, and inalienable. It is the setting up of a sovereign that creates society. Sovereignty is the supreme power on earth. In the sovereign resides the essence of the commonwealth. The sovereign, says Hobbes, may be one, few or many, although Hobbes' own preference is for the one. The advantages which Hobbes points out in favour of monarchy are—

(*a*) that the privatei nterest of the monarch is likely to be identified with the general interest of the people;

(*b*) that monarchy can work much more conveniently than other types of government; and

(*c*) that a monarch is likely to remain fixed in his ways.

All these arguments have, no doubt, some amount of force. The practical purpose of Hobbes was to justify royal absolutism. But in doing this he received no thanks from the other supporters of royal absolutism in his day, who wanted the king to rule by divine right. They argued that if the king's authority was not independent of the people's will, the same people who gave him absolute authority could hand over that authority by means of another contract, to a few or to many. Nor would the opponents of monarchy have anything to do with Hobbes, because they wanted to limit the king's power.

The sovereign, says Hobbes, is the supreme law-maker. He cannot do any injustice to his subjects because he represents them. He may commit moral wrong, but he cannot do any legal injustice. He is responsible to God alone for his actions. This is very much like the doctrine that the king can do no wrong. The sovereign, being the ultimate law-maker, is above the law. He cannot bind himself by any promises. He has the supreme commandership of the army. He is even the judge of the doctrines and beliefs allowed to be taught in the community.

Locke. In Locke there is confusion of all the forms of sovereignty. A recent writer remarks: 'The more closely Locke's treatise is studied, the more clearly will it be seen that it is an attack directed far more against the idea of sovereignty, than against the claims of absolute monarchy (*29*).' The traditional view of sovereignty is that it should be absolute and indivisible. This view we find in Hobbes, Austin, and many others. But, according to Locke, sovereignty is

neither absolute nor indivisible. It seems to be divided between the people on the one hand and the rulers on the other. As seen already, the original contract is an agreement among the people to put an end to the state of nature and to create a civil society in its place. This original contract requires the consent of every member of society. The consent may be given tacitly or explicitly. Residence in a country means tacit consent. As a result of the second contract, the rulers are vested with certain powers and if they fail to carry out their requirements, they may be dismissed and others appointed in their place, without the reversion of society to the state of nature.

Locke's theory of sovereignty means in practice that the people have sovereign authority in reserve but that the actual power is exercised by the government, *i.e.*, by the king and the parliament as far as England is concerned, and that when the government violates its trust, it becomes necessary for the people to withdraw their power from the government. Thus the people are in the nature of a sleeping partner. They let the government carry on the sovereign authority within certain limits till it begins to abuse its power, and when it does that, the sovereign people rouse themselves from their slumber, overthrow the existing government, and set up another government in its place. There is always the residual power in society to overthrow a government, but there is no constitutional way of doing it. Therefore, in the last resort it is just a case of revolt or rebellion under any form of government. Locke's theory justifies revolution when it is the act of the whole community. The difficulty is in determining when it is the act of the whole community. As T. H. Green points out, Locke does not propose to carry out his own theory in the particular case of the reform of the English representative system.

The serious error in Locke's theory of sovereignty is in his placing legal limits on the power of the sovereign. For instance, he declares that the legislature *cannot* rule by extempore decrees. The words 'ought not to' would be preferable, because it is generally admitted that the legal sovereign has competence to use arbitrary power in taking a person's life or property. Yet Locke says 'cannot', and this results in serious confusion. It is a kind of error that pervades declarations of rights. He thinks of natural rights apart from society.

Rousseau. As seen already, according to the terms of the contract, A, B, C, D, etc. surrender their natural rights to the collective

whole A+B+C+D, etc. Here we have the foundations of popular sovereignty and democratic government. Each citizen has a share in the sovereign power, and each is also a subject in that he has to obey the law, which he himself has made as sovereign authority. Rousseau adopts the view of Hobbes that sovereignty is absolute, inalienable, and indivisible. While Hobbes locates it in the wrong place, *viz.*, in the monarch, Rousseau places it in the body politic as a whole. From Locke, Rousseau takes over the distinction between sovereignty and government, but does not allow government as much authority as is allowed by Locke. To Rousseau government is only a derivative authority, always subject to the will of the sovereign people. His sovereign is an ever-active or vigilant sovereign, unlike that of Locke; he does not wait till things are carried to an excess by the government before he rouses himself to action.

The greatest contribution made by Rousseau to political theory is his doctrine of the general will. The general will is the only manifestation of sovereignty. It is vested in the body politic as a whole. [The doctrine of the general will is discussed in the note at the end of this chapter.]

(d) Type of State and Government

As regards the type of State, Hobbes' theory favours royal absolutism, Locke's theory favours constitutional government or limited monarchy, while Rousseau's theory results in popular government, and particularly in direct democracy.

In their conception of government too, the three writers differ fundamentally. Hobbes makes no distinction between State and government. To him the *de facto* government is always *de jure*. Locke and Rousseau, on the other hand, distinguish between State and government and between *de facto* and *de jure* government. As said already, according to Hobbes, dissolution of government means dissolution of the State and return to primitive anarchy, which is absurd. Locke holds that the sovereign people have the right to choose their government and change it when it becomes unsatisfactory. Government is a trust or a moral responsibility. To Rousseau, government is simply an agent or a 'living tool' of the people. It is not the result of a contract. It has only limited authority and this authority is derived from the sovereign people. It has no original power. Its power can at any time be recalled by the sovereign will. The subordinate

character of government is brought out by Rousseau in his conception that in their periodic assemblies people decide upon two questions (*67: Book III, Ch. XVIII*):

(1) Do we want the present form of government to continue ?

(2) If we do, do we want the present personnel to continue ?

As regards the powers and functions of government, Hobbes gives absolute powers to the government which is also the sovereign. Locke gives the government only limited power, for according to his theory of the contract, people surrender only as much of the natural rights as is necessary to secure the benefit of civil society. Again Locke distinguishes between the legislative and executive parts of government, which Hobbes had failed to do, and makes the legislative the supreme part of government. Hobbes makes order and security all important. Locke says that government should not only keep order, but govern well. The rulers should rule for the welfare of the subjects. Here Locke makes a definite advance upon Hobbes.

According to Rousseau, the business of government is only executive. Legislation is to be in the hands of the sovereign people. People cannot part with the power to make law without curtailing their sovereign authority. The essence of legislation is *will* and *will*, in its very nature, cannot be transferred or represented. On this ground Rousseau attacks representative government and makes a powerful plea in favour of direct democracy, such as that which prevailed in the small city-states of Greece. In his own words: 'Sovereignty, for the same reason as makes it inalienable, cannot be represented; it lies essentially in the general will, and "will" does not admit of representation. It is either the same, or other; there is no intermediate possibility. The deputies of the people therefore are not and cannot be its representative (*67 : Book III, Ch. XIV*).'

Thus, according to Rousseau, the body politic has the will and the executive carries out the will. But this distinction is incapable of being stretched very far. For, if pressed too far, it would mean that the executive has no will at all, which is a clearly impossible position. The executive is not simply like a policeman who carries out orders. In every country the executive is given a considerable amount of discretion. Therefore the executive does have a share in the general will. Conversely, people not only make laws but also say how these laws should be executed and by whom they should be executed. Thus they have a share also in the execution of their will. The conclusion to which we are driven is that while we

can draw a theoretical distinction between will and the execution of will, this distinction cannot be applied in detail. It is well to distinguish between the executive and legislative, but we cannot consign the executive to such a surbordinate place to which Rousseau consigns it.

A second distinction which Rousseau makes between the sovereign people who form the legislative and the executive which is the government, is that the former should concern itself with what is *general* and the latter with what is *particular*. This point of view is open to several difficulties. It is obviously difficult to draw a sharp line between what is general and what is particular. Even if we can say that a matter is general if it concerns the whole community equally, and is particular if it concerns a particular class or person, our difficulty is not solved by any means. In the modern State almost every piece of legislation is of a *particular* kind. There is hardly anything which concerns the whole community equally. Therefore if Rousseau's distinction between general and particular measures is to be followed strictly, we shall be defeating Rousseau's very purpose in making the sovereign supreme. Instead of making government a subordinate authority, we shall, in practice, make it a supreme body. Moreover, the setting up of a government itself is a 'particular' act, and the people have no right to it. Rousseau's distinction is capable of application to small city-states only.

(e) Individual Liberty and Theory of Rights

Hobbes, on the whole, adopts the legal theory of rights; Locke bases his teaching on the theory of natural rights ; Rousseau derives rights from membership in society and thus paves the way for the idealistic or personality theory of rights.

In Hobbes' theory the subject has all those rights which the law allows him. Wherever the law does not put a restraint, the subject retains his natural right. This does not mean that the sovereign's power over life and death is superseded. The sovereign can step in at any time and limit the liberty of the subject. The subject has power wherever the law does not regulate. In Hobbes' thinking, authority and liberty are opposed to one another.

According to Hobbes' view, there is no limit to what the sovereign may command, although there is a limit in extreme cases to the individual's obedience. This is in the very nature of the contract. The

sovereign power was established for the security of life and happiness.

(*i*) Therefore, if the sovereign assails the individual's life, the whole value of submission disappears. This is a paradoxical position. Even if the individual has been justly condemned, he is justified in trying to save his life. It is only when his own life is assailed that the individual has the original right of escape. In the case of another, he may interfere, but not do more.

(*ii*) In certain cases, the individual may refuse to serve as a soldier, because the contract was formed to secure his life.

(*iii*) As soon as the sovereign becomes incapable of maintaining his authority and providing protection to the individual, the contract is dissolved. All this shows the rigorous logic that Hobbes employs in building up his theory. Except in these extreme cases, the authority of the sovereign is absolute.

When we come to Locke, we find that he makes government depend upon the consent of the governed. The individual has all those rights which he has not surrendered to the State. The State exists mainly to protect life and liberty. Yet Locke so qualifies popular rights as to reduce them to nothing.

According to Rousseau's theory, the individual is as free in the civil state as he was in the state of nature (if not more so) because he does not surrender his right to any outside person. He surrenders them to himself and to others who form the body politic. The problem, as stated by Rousseau himself, is 'to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before.' The solution to the problem Rousseau finds in the social contract, according to which 'each of us puts his persons and all his power in common under the supreme direction of the general will, and, in our corporate capacity, we receive each member as an indivisible part of the whole'.

Thus we see that, according to Rousseau, man is a free person in the civil state. Whatever restrictions there may be are restrictions which he places upon himself. He obeys a self-imposed law, and this is not a denial of freedom. 'Obedience to a law which we prescribe to ourselves is liberty.'

The only criticism that we wish to offer of this view of freedom is that Rousseau assumes that a complete democracy means complete

freedom. Experience shows that this does not always prove to be the case. Rousseau overlooks the possibility of the tyranny of the majority, which J. S. Mill greatly apprehended in modern democracies. His contention that where general will is present, the individual may be 'forced to be free' may easily become a synonym for the tyranny of the majority. In spite of this criticism we have no hesitation in saying that in Rousseau we find one of the best interpretations of freedom and it serves as a key to the central problem in political science *viz.*, the problem concerning the relation between social authority and individual obligation.

Truth in the Theories of Hobbes, Locke and Rousseau

Hobbes. The theory of Hobbes as a whole is very consistently developed. Once we grant his premises, his conclusions necessarily follow. Hobbes is an acute thinker. His chief contribution to political theory is his doctrine of legal sovereignty. The chief defect is that he does not supplement legal sovereignty by political sovereignty. Modern writers recognise the truth that at the back of the legal sovereign, and superior to it, is the political sovereign or the will of the people. Hobbes is mistaken in identifying the will of the state with the will of the *de facto* ruler. Such identification makes it difficult for him to distinguish the State from government. In fact, he goes so far as to say that the State is dissolved on the death of a ruler.

Hobbes claims that the sovereign is the representative of the people. We may agree that fundamentally a government is represen-tatative if it gives the truest expression of the needs of the people. But we are bound to say that Hobbes' term 'representative' is not used in its ordinary sense. There is no guarantee that the supposed representative sovereign will really represent the people, *i.e.*, will act for their public good. Hobbes' answer would be that we cannot limit the legal power of the sovereign for he is the supreme law-maker. But the question is how to constitute the legal power of the sovereign so as to have a guarantee of good government. Concentration of power would no doubt make the government efficient. But what is needed is a compromise between concentration and security from oppressiox.*

It may be argued that the theory of Hobbes allows no liberty to

* Hallowell says that Hobbes permits no distinction between the state and society, the state and government or between law and morality *(31 : 78)*.

the individual and leaves the individual to the mercy of the ruler. According to this theory, the individual should wait until his life is in danger before he refuses to obey the sovereign. Advocates of the rights of the people may say that whenever the sovereign acts in a tyrannical way, paying little attention to people's welfare, the 'right of resistance' should be asserted. In reply to this argument it must be said that, even on Hobbes' own grounds, whenever the government is badly carried on the contract should disappear. But what is much more important is that Hobbes makes us see the fundamental necessity of a strong government. He realises the danger of allowing the 'right of resistance' too soon. The loyal citizen should ask himself: Is the case one in which it is wise to risk civil war and bring about anarchy? Whenever resistance to government is in question, civil war may result. People, in resisting, may start out without any idea of civil war but they may be driven into it. Once resistance to government is started there is no knowing where it will stop. It is perhaps more important that a government be strong than thoroughly just. Security and peace are more important than occasional acts of injustice. Any kind of resistance is liable to weaken the government. It is this truth that Hobbes forces us to see. As Iver Brown remarks, Hobbes was the first great philosopher of discipline.

For thinkers like Hobbes who start with absolute individualism, it is difficult to get a real insight into society. The starting point of Hobbes is defective. He assumes that man is essentially selfish and that he is actuated solely by the pleasure-pain motive. This is false psychology. Plato, on the other hand, starts with the right assumption that the individual is not self-sufficient and that he has no meaning or significance apart from society. In Hobbes the only common element which unites people is their common fear of anarchy. So he is compelled to put the unity of society, apart from the people, in the will of the sovereign.

Locke. Locke is the philosopher of the English Revolution of 1688. His *Second Treatise on Civil Government* was very influential historically. It throws a great deal of light on the ideas of men during the Revolution. It is a political pamphlet rather than a scientific treatise on political theories. It is not so closely argued as Hobbes' *Leviathan.* The central idea in Locke's theory is that the sole function of the government is to satisfy the needs of the people. If a thing works for the public good, Locke does not care much about philosophical consistency. Hobbes makes order and security all-

important. Locke says that the government should not only keep order, but should also govern well. The ruler should rule for the welfare of the subject. All this leads Locke to recognise the existence of political sovereignty, although he does not fully understand the implications of legal sovereignty. In bringing out the difference between Hobbes and Locke with regard to this point, Gilchrist observes: 'Hobbes gives a theory of legal sovereignty without recognising the existence and power of political sovereignty; Locke recognises the force of political sovereignty but does not give adequate recognition to legal sovereignty (*28 : 63*).' In the judgment of Laski, Locke gave to the theory of consent a permanent place in politics.

Rousseau:

(1) Rousseau retains the language of the contract, but his ideas often surpass the ideas of the contract theory.

(2) Rousseau combines the best elements in the theories of Hobbes and Locke. As one writer puts it, he combines the premises and temper of Hobbes with the conclusions of Locke.

From Hobbes he takes over the idea of sovereignty as absolute, inalienable, and indivisible, and from Locke he borrows the idea of public good as the test of a good government. The combination of these two ideas results in the doctrine of the general will. Unlike Locke, Rousseau is not content with insisting merely on the good of the people. He wants the control of the people as a whole. 'Thus, in Rousseau's hands the theory becomes fundamentally democratic and the claim is made that the people as a whole shall rule in fact as well as in name....It was Rousseau, above all, who first made positive democracy a live doctrine in the world of politics (*Cole*).'

Note on the Doctrine of the General Will

The doctrine of the general will has played a very considerable part in recent political discussion. To some thinkers it is a meaningless, if not a dangerous, doctrine. To others it is the corner-stone of democracy of political philosophy.

In order properly to understand the conception of the general will, it is necessary to go behind that conception and begin with the distinction between 'actual will' and 'real will'. At the very outset, it must be said that the terms 'actual' and 'real' are used in a technical sense in order to convey two different ideas. Therefore, to use the terms interchangeably, as we do in popular conversation, is not fair.

L. T. Hobhouse, in his *Metaphysical Theory of the State*, is guilty of this confusion. He virtually says that what is actual is real and what is real is actual.

Those who use the term in the technical sense and make the distinction serve as a basis for the conception of the general will, avail themselves of the ever-present conflict that goes on in man between 'I' and 'better than I'. They use the term 'actual will' to describe man's impulsive and unreflective will. It is my will from moment to moment. It does not take into account life as a whole. It considers self-interest but does not consider it in relation to the well-being of the community at large. It is the individual's rebellious will, his 'transitory' or 'trivial' will. It is narrow and self-contradictory. If I am a reasonable being at all, I try to free myself from this 'actual' will, however intense it may be, and bring myself under the subjection of my 'real' will. My 'real' will expresses my true freedom. It is my 'constant' will, not in the sense of being 'permanent' merely, but in the sense of giving me abiding satisfaction. It is a will purged and purified of at least some of its selfishness. It is my 'good' will. It no doubt takes self-interest into account, but it duly subordinates it to a common interest or common good. It is not satisfied with the gratification of this or that particular desire. It takes into account life as a whole. It is a reasonable will. It expresses itself in the harmony between the individual and society. It is never fully present in any individual.

Hobhouse is a vehement critic of the above distinction between the 'actual' will and the 'real' will. He claims that if the 'real' will were worked out it would be so remote from anything that we know that we would not be able even to recognise it. We do not agree with this criticism, for it treats 'real' will as a mere ideal conception which exists in the realm of abstraction alone. The fact that we constantly criticise ourselves either by means of our reason and conscience or by means of experience (by the method of trial and error) shows that the distinction is a valid one. By making this distinction, we do not mean to suggest that the 'actual' will is merely illusory, as Hobhouse insists that it is. All that it means is that it is incomplete. It needs to undergo revision. Hobhouse quibbles with words and says that my will at any time is my 'real' will. This is not fair to Bosanquet and other idealists, who use the terms 'real' and 'actual' in a technical sense. Hobhouse makes an absolute gap in a man's life. He splits up one's acts as if they had no relation to one another. Despite what

Hobhouse might say, the 'real' will is present to a substantial extent in the average citizen although we admit that in its fulness it is not complete even in the best of us. The mere fact that a certain desire of mine is intense does not make it 'real'. What makes it 'real' is its conformity to the common good of which the individual good is an intrinsic part. The average man's life is a mixture of the 'actual' and 'real' wills, with a more or less steady progress towards the 'real'.

It is upon the above conception of the 'real' or 'good' will that philosophers have built the doctrine of the general will. General will may be defined as the sum total, or, better still, an organisation or synthesis of the 'real' wills of the individuals comprising society. Bosanquet defines it as 'the will of the whole society *as such* or the wills of all individuals *in so far as* they aim at the common good'. It is the common consciousness of a common end or good. It is the most fundamental of Rousseau's political concepts, although his ideas on it are not always clear. For the original contract which brings civil society into existence, Rousseau thinks that unanimous consent is necessary; but after that, general will is enough. The term 'general will' suggests two ideas to him—the numbers voting and the common interest which it expresses. In one place he says clearly that common interest is more important. To quote his own words, 'What makes the will general is less the number of voters than the common interest uniting them (*67 : Bk. II, Ch. IV*).' Yet there are times when he comes dangerously close to identifying general will with a numerical majority. However, it is on the side of common interest or general good and not on the side of numbers, that Rousseau's view becomes fruitful.

All this means that general will is not identical with majority vote or public opinion. So long as genuine public interest is present, general will may be expressed by the votes of majority, and even by the vote of a single person. For majority opinion may at times be little more than collective selfishness. Nevertheless, we are justified in saying that majority opinion is more likely to be general than the will of a single person or a selected class of persons. It is a question of probability. Thus it is that the doctrine of the general will in practical terms leads to the democratic form of government. A democratic organisation is likely to be more truly expressive of the general will of the community than an aristocratic or a monarchic organisation. But even in an aristocratic or a monarchic organisation so long as society holds together and there is no violent conflict, general will may be said to be indirectly present.

How General Will is Generated

In any society, according to Rousseau, we start with what he calls the Will of All, *i.e.* the particular wills of the members of society. Each member of society looks at any public question before him from his own particular angle. But if it is a decent type of society with the spirit of citizenship present in it, the selfish element in the wills of the individuals cancel one another out; and as the result of such mutual cancellation we eventually get a general will. Thus we start with the Will of All and arrive at a General Will. This does not mean that the general will is simply a compromise, of the lowest common denominator. It is the expression of the highest in every man. It is the spirit of citizenship taking concrete form and shape. The decisions of a general will are like the decisions of an ideal committee, which are not compromises, but the highest expression of the best in each member. As a result of discussion and deliberation, everybody's will becomes modified, purified and enlarged.

Such a general will is, according to Rousseau, the only manifestation of sovereignty. When sovereignty acts for the common interest, it is the exercise of the general will. So long as laws are in the common interest, they are an expression of the general will. General will is the key to self-government. When it is in operation, the individual can be 'forced to be free'. In such cases, the individual is forced out of a lower level of living and thinking, and is freed to a higher level of living and thinking. It is like the 'freedom' of a man who is forcibly turned back from walking over a dangerous bridge, the peril of which he did not realise, or of a man who is constrained from contracting himself to a life of slavery.

Characteristics of the General Will

The first characteristic of the general will is its *unity*. The general will cannot be self-contradictory, because it is a reasonable will. It does not exclude variety. It makes for unity in variety. 'It makes and preserves the unity of the national character, and it issues in those common qualities which we ought to expect to find in the citizens of a given State (*54 : 140*).'

Secondly, the general will is characterised by *permanence*. It is to be looked for directly neither 'in the tempests of popular feeling nor in the vagaries of statesmen'. It is to be sought in the character of the

people. It is more permanent than any particular act or movement in which it finds expression (*54 : 140*).'

Thirdly, the general will is always a *right will*, because it always tends to the welfare of the whole. It aims at what is right and best under any given circumstance. This does not mean that it is infallible. As Rousseau points out, the will is always sound, but the judgment guiding it may be deficient. It may make errors of judgment, but cannot be morally vicious. People start out with the right aim, although they may be led astray. In Rousseau's own words: '... of itself the people wills always the good, but of itself it by no means always sees it. The general will is always in the right, but the judgment which guides it is not always enlightened (*67: Bk. II, Ch. VI*).

Criticism :

The doctrine of the general will has been subjected to several lines of criticism.

(1) The conception is said to be too abstract and narrow, unlike anything that we know in the world of practical affairs. If the general will is not to be determined by a majortiy vote, critics say that it is nothing. It is neither general nor a will. We are not dismayed by this line of criticism. Such criticisms are always levelled against abstract conceptions. Advocates of the doctrine take care to say that their conception is valuable only in so far as it embodies a common interest. This qualification is the strength of the doctrine. All that we can hope for is an approximation to ideal, and not a complete realisation of it. The general will is both actual and ideal. It is not wholly actualised in any State.

(2) Some writers say that the doctrine may easily lead to State Absolutism. In the name of the 'general will' the worst kind of tyranny may be perpetuated. The phrase 'forced to be free' opens the flood gates of absolutism. There is much force in this criticism. Nevertheless, it is not insurmountable. Rousseau is an advocate of the conception of absolute sovereignty, but at the same time he places certain moral limits on the power of the sovereign. Since the general will is always in the right, it will intervene only when it is proper. 'The sovereign', says Rousseau, 'cannot impose upon its subjects any fetters that are useless to the community, nor can it even wish to do so.' We contend, therefore, that Rousseau does not sacri fice the individual in

securing civil liberty. Liberty is not mere absence of restraint. Every interference on the part of the State does not mean diminution of the liberty of the individual.

(3) The doctrine of the general will hinges upon the conception of the common interest, and common interest, it is argued, is very difficult to define. Even the worst of tyrants can justify his action under the pretext of common good. Besides, we cannot always say in advance whether any particular expression of the general will be in the common interest or not. Only the sequel can answer that question. These are no doubt limitations of the doctrine of the general will which we must admit. Nevertheless, these very limitations constitute the strength of the doctrine. They serve to show that the doctrine is not a purely ideal or fanciful conception. We have to work with men and institutions as they are, but at the same time we need a goal or end towards which things may be directed. General Will, we claim, is the best possible conception for the guidance of political endeavour. It 'generally requires some degree of energy or effort, perhaps of self-sacrifice (*5 : 106*).'

(4) The objection is raised by some that, even if we grant for the sake of argument that the general will is always right, there is no guarantee that the State machinery will always be right. In reply to this objection we grant that the State machinery is imperfect. But we do not pretend that we can fully realise the general will. All that we can hope to do with the imperfect machinery at our disposal is to approximate to the general will as far as possible. It is in the educated or enlightened public opinion that we should look for the best approximation to the general will of the State.

Truth in the Doctrine of the General Will

(1) It gives direction to political endeavour. It places before us a definite goal towards which we can strive in spite of temporary setbacks.

(2) It emphasises the fact that society is an organic unity and not a mere aggregate of isolated individuals. It shows that the State has a will and unity of its own, in some ways

different from the will and unity of its individual members. 'The State indeed has no life apart from the lives of its members, but it has or may have, a longer, broader, and fuller life than that of any individual of any generation of its citizens (*54 : 139*).'

(3) It demonstrates the truth that 'Will, not force, is the basis of the State.' The conception of the general will does not call for the coercion of the minority *qua* minority. It shows that the policy of the majority can be modified according to the strength and sagacity of the minority.

(4) It teaches that the State is natural in that it has its basis in the will and the natural need of man. 'The State exists and claims our obedience because it is a natural extension of our personality (*Cole*).'

(5) It shows that the true basis of our democracy is not force, not even consent, but active will.

The reason why we ought to obey the general will is not because it is imposed upon us, but because it is an intrinsic part of ourselves. In obeying the general will of the State we obey ourselves, the very best in us. The general will interprets the individual to himself. It stands for the unity of myself with myself.

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6

THE JUSTIFICATION AND END OF THE STATE

Even more important than investigation into the origin and evolution of the State is the question relating to the justification and end of the State. Merely to show that the State has come into being due to one reason or another is not enough. What we are most concerned with is, why should there be a state at all ? Has the State a rational basis ? Can we not manage without the State ? At a very early time, Aristotle saw the force of these queries when he claimed that the State first came into being in order that we might live, but was continued in order that we might live happily. Aristotle thus justified the State as being essential to man's good life. In spite of this reasoning, we cannot but feel that even in the best among Greek writers we do not find an adequate justification of force exercised by the State. They show us convincingly that the full and free development of man is impossible in isolation and that man requires society for the attainment of this end. But the problem of force wielded by the State hardly engages their attention, largely because it is a modern problem.

The State is a way of regulating human conduct, by compulsion if necessary. The will of the State is in many ways superior to all other wills. The State has the power to take away the individual's life, liberty, and property. It commands him to surrender his property by means of taxes and his life upon the battlefield or in punishment for crime. Can all this be justified ? Many attempts have been made to justify, and even condemn, the existence of the State in all ages. We shall sum them up under the following heads :

1. The Anarchist View

The anarchists find no justification whatsoever for the State. They believe that the State has no rational purpose to serve and that the sooner we eliminate it the better it will be for man's growth and development. The revolutionary anarchists want to subvert the present social order by violent methods. With these anarchists we are not much concerned in a serious study of political science. The type who

demand our attention are the philosophical anarchists such as Tolstoy and Kropotkin. Their objection is not so much to the State as such, but to force used by the State. They claim that the truly moral life is realised by one's own effort and that the authority of the State is a hindrance to the development of such morality. They see in this authority a destruction of all moral values. The State is to them red rag to a mad bull. Instead of making man moral, it makes him immoral by the force that it wields. Instead of trusting the individual to do the right thing, it distrusts him and threatens him with punishment. Government, they argue, is therefore not only useless, but also mischievous. According to them, voluntary organisation can very well undertake the work of society and, if the State is to be retained at all, it should become a voluntary organisation. Laws should take the form of suggestion and advice, and taxes the form of voluntary contribution. The philosophical anarchists believe that society should be governed by love and not by the 'irrational' principle of force. Man should be so educated that he will voluntarily and almost instinctively do that which is true, good, beautiful, and noble. The perfect society they conceive in terms of a love-knit family, untouched by authority. The only kind of government that they are prepared to support is the perfect and unfettered self-government of the individual. Recent anarchists have usually been opposed to the institution of private property as well as to organised religious authority. Bakunin (1814-76) wanted a society which would be anarchistic, collectivistic and atheistic.

Criticism :

Several lines of criticism suggest themselves in considering philosophical anarchism.

(1) We are prepared to concede to the anarchists that true morality is largely self-earned. But this is not to admit that State action means a complete destruction of moral values. The State cannot *directly* promote or enforce morality. Yet it can so order external conditions as to make it possible for the individual to live the good life. Therefore, our contention is that State action does not destroy moral values; it only diminishes them. Even in the case of the best of us, the policeman's club is at times an aid to living the good life. The requirement of good action does not prevent the growth of morality. We can do right by conformity.

(2) The anarchist is mistaken in thinking that liberty is the

greatest of all political goods. Liberty, we need to remind ourselves, is not an end in itself. It is simply a means to an end. Liberty and authority are not opposed to one another, as the anarchist conceives them to be. They are supplementary and complementary to each other. No human association leaves the individual completely free. Every group implies some restraint upon individual freedom.

(3) The anarchist gives us a faulty picture of human nature. His assumption is that organised political society has debased human character and that once it is removed, man will once again become a noble being. This is very much like the assumption of Rousseau in his essay on *Inequality* that man in the state of nature lived an idyllic life and that the development of civilisation has brought about all our present ills. However, Rousseau himself considerably modified the view in his later *Social Contract* and came to the conclusion that the balance of advantage is on the side of the civil state. It is easy enough to become poetic regarding the virtues of the 'noble savage', but what we know of human nature and the history of primitive man gives the lie to such a roseate picture. We are safe in saying that man has reached his present level of development in and through organised political society.

The anarchist assumes that we can effect tremendous improvement in human nature by education, persuasion, and moral teaching and that, in some far-off day at least, we can entirely rid ourselves of the State. While we do not want to deny that human nature can be greatly improved by the means suggested and that the scope within which it is possible to improve human nature has not yet been fully discovered, we fear that the destruction of the State at present or in any conceivable future will lead to general disorder and chaos. The brute in man cannot be easily destroyed and it is the coercive authority of the State which keeps it in check.

(4) The anarchist assumes that there is nothing but love in the perfect household. This is a false assumption. Authority, law, and restraint are not evident on the surface in an ideal family. Nevertheless, they are there. As Hearnshaw observes, in order to curb criminal tendencies in the

natures of all, it is necessary to have the might of the State in reserve. Therefore, at least for the present, we cannot dispense with the tutelage of Government and the sanity of law.

(5) The anarchist purposes to do away with the authority of the State and substitute for it the authority of the individual conscience. But the individual conscience, as has been aptly remarked, is an extremely tricky and capricious sovereign.

2. The Religious View

From very early times people have justified the existence of the State on the supposed ground that it is the creation of God and that obedience to the State is in accordance with Divine purpose. Oriental monarchies were for the most part theocracies. Membership in the state was at the same time membership in the religious body. Since the head of the State was also the head of the religious organisation, the State and the religious community were identical. The conception of theocracy was most highly developed among the Hebrews who regarded themselves as God's chosen people. The Jewish State was the direct result of Divine will and was justified wholly on religious grounds.

The Greeks, too, justified the State in religious terms, although they did not carry the theocratic conception so far. Among the Greeks the worship of common gods lay at the foundation of State life. The institution of the State was attributed to the interposition of some god or other, and each city had its special deities who presided over it. Plato and Aristotle, the best among Greek political thinkers, advanced a different view. They looked upon the State as natural and necessary. But they did not solve the problem of the reconciliation of political authority with individual freedom. They contented themselves with the view that the State had come into existence through natural causes and that the life of the man apart from the State was incomplete and even meaningless.

Like the Greek city-state, the Roman State had a religious origin. The Romans, too, had their special divinities and the Roman tribes were knit together by a common religious worship. Later on when Rome became an empire, divine attributes were assigned to the Emperor.

Martin Luther, with whom the Protestant Reformation began, wrote: 'It is in no wise proper for anyone who would be a Christian

to set himself up against his government, whether it act justly or unjustly.' Unfortunately this view is still held by many Christians in western lands.

Criticism :

In this age of scientific enquiry the argument that we should obey the State merely because it is supposed to have been created by God does not carry any conviction. There is no positive proof to show that any State is the direct creation of God. The most that even religious-minded writers are prepared to admit is that State-life is in accordance with the divine purpose. Even if we assume for the sake of argument that the State is divinely created, such a theory does not help us to distinguish right forms of political authority from wrong forms.

3. Physical Force

From the very early days of political speculation an attempt has been made to justify the existence of the State on the ground that it possesses superior physical force. The Sophists held that the State was either the rule of the strong for the oppression of the weak or the combination of the weak, who formed the majority, against the physically strong but less numerous. The early Fathers of the Christian Church and the theologians of the Middle Ages emphasised the mere physical strength of the State in their enthusiasm to exalt the authority of the Church over the State. To Machiavelli the State is only a power-organism. Yet towards the close of his celebrated book, he admits that the power of the State is not for its own sake, but for the sake of the prestige, honour, and well-being of the people.

In modern times, Spinoza. Marx, Engels, Nietzsche, and Spencer have given currency to the view that the State is the embodiment of force. Spinoza held that the state expressed superior physical strength and that its right was limited only by its power. Marx and Engels regarded the State as an instrument of the ruling class. Nietzsche built his theory of the Superman, on the basis of physical strength. Spencer held that the State was an expression of mere brute force and that its power should be curbed in the interest of individual liberty.

Criticism :

To say that we must obey the State because it is the rule of the strongest seems absurd. This absurdity is clearly brought out by Rousseau when he says: 'A brigand surprises me at the edge of a wood: must I not merely surrender my purse on compulsion; but even if I

could withhold it, am I in conscience bound to give it up? For certainly the pistol he holds is also a power (*67: Bk. I, Ch. III*).' To yield to force is, at best, an act of prudence. It is not a moral duty. Force in itself, as Laski says, is void of moral content (*48: 64*). Political subjection, if it is to be justified, calls for the *will* of the subjects. Without such a will in the State. we have a mass of slaves and not a body of citizens. Force is justifiable only in so far as it maintains and furthers human rights.* In the striking words of T. H. Green, 'It is not supreme coercive power as such, but supreme coercive power exercised in a certain way and for certain ends, that makes a State; *viz.*, exercised according to law, written or customary, and for the maintenance of rights.'

This theory is in essence a revolutionary theory. For, if it is fully worked out, it will mean that any group is justified in asserting itself and securing control of the government as soon as it is physically able to do so. The force of the State is justifiable only as long as it is able to repeal other forces. But the moment one of these forces is able to establish itself successfully, it becomes right and original force ceases to be right. We may, therefore, ask with Rousseau, 'What kind of right is that which perishes when force fails?' To quote Rousseau again, 'If force creates right, the effect changes with the cause: every force that is greater than the first succeeds to its right. As soon as it is possible to disobey with impunity, disobedience is legitimate: and the strongest being always in the right, the only thing that matters is to act so as to become the strongest....If we must obey perforce, there is no need to obey because we ought: and if we are not forced to obey, we are under no obligation to do so. Clearly, the word "right" adds nothing to force; in this connection it means absolutely nothing.'

At best. this view justifies the existence of government but not the existence of the State. It justifies the governance of a particular ruler, but not the authority of organised political society.

In the 17th and 18th centuries in Western Europe, the contract view was the most popular in justifying the existence of the State. According to it the authority of the State is justifiable because we

* Speaking on the relation between justice and force, Pascal writes: 'Justice without force is impotent; force without justice is tyranny. Justice without force is a myth because there are always bad men. We must therefore put together justice and force; and therefore so dispose things that whatsoever is just is mighty; and whatsoever is mighty is just.'

have set it up ourselves by free choice. At first sight, it would appear that there were no better ways of justifying the existence of the State than this. The State, it might be argued, is the product of the will of the individual and, therefore, obedience to it is thoroughly reasonable.

The Contract View

Criticism :

A moment's reflection is enough to show that to base political authority on a contract is to base it on shifting sand :

(1) History knows of no State which came into being as the result of a deliberate agreement among men. The State was not deliberately created by particular individuals; it has evolved gradually.

(2) If subjection to the State is justified on the ground of free consent, it is reasonable to demand unanimous consent for every law of the State before it can become operative. Majority opinion is not enough. There is no reasonable ground for the coercion of a dissenting minority by the majority. The force of this criticism is clearly brought out in the political theory of Herbert Spencer. Like a true individualist, Spencer argues that the State should undertake only those functions which the people are likely to hand over to the State because they are unable to undertake themselves. According to him, these functions are (*a*) protection against external enemies; (*b*) protection against internal enemies; (*c*) nationalisation of land. (In his later works, Spencer gives up the last mentioned function and substitutes for it the enforcement of contracts.) No sooner has Spencer assigned these functions than he proceeds. illogically enough, to introduce certain qualifications. He realises that even on these three vital matters we cannot get unanimous consent in any society. Thus he says that Quakers and conscientious objectors to war will be opposed even to a defensive warfare, criminals to the State undertaking defence against internal enemies, and landlords to the nationalisation of land. and that the principle of absolute unanimity will have to be disregarded in these cases. The question that we naturally ask ourselves is that if the principle of unanimity is to be set aside in these cases, why should it not be ignored in other cases as well ? Spencer is opposed to popular education, factory

legislation, and the like. Yet there are many people to-day who think that compulsory conscription is worse than factory legislation and that, if coercion is to be employed, it is much more justifiable to employ it in the latter case than in the former. The conclusion then to which we are inevitably driven is that the principle of literal consent is of no avail in solving the problem of political authority and individual obligation.

(3) Even if literal consent is possible in any matter, it is ruled out in the modern State by the fact that representative government in some form or other is the only way by which the will of the State can find expression. Direct democracy is impossible under modern conditions. To say that tacit consent is enough in these cases, according to the argument of the contractualists, is not justifiable. 'Because consent involves the notion of a deliberate act of will, something more positive than this (*viz.*, tacit consent) is required (*48 : 31*).'

(4) If consent is freely given, it is logical to argue that it might be freely withdrawn and that those so withdrawing might freely unite again to form another State. Hobbes realised this difficulty and attempted to solve it by declaring that it was a law of nature that men should keep their covenants when made. It is obvious that such an argument carries with it no conviction whatever. It is a pure assumption on the part of Hobbes that derives no support from experience or reason. Other contractualists have argued that people who want to withdraw their consent from the law of the State may be regarded as 'strangers within the State'. This is sheer nonsense. We cannot agree with Spencer when he claims that the individual has a right to make an 'outlaw' of himself and yet remain within the State. A 'right' of this description would make administration impossible and eventually lead to anarchy.

(5) David Hume advanced the most damaging criticism of the contract theory when he claimed that it was in essence revolutionary as it provided no power which could hold the individual to his agreement. T. H. Green reiterates this criticism when he claims that the contract which

people in the State of nature are supposed to make is no valid contract at all, for there is no 'imponent' to enforce such a contract. The sovereign authority succeeds the contract and does not precede it, as it should.

3. The Utility Theory

Many thinkers have tried to justify the existence of the State on utilitarian grounds. They argue that the rationale of the State lies in the fact that it provides law and order, protects the individual against internal and external enemies, enforces contracts, adjusts relationships between individuals and group fosters literature, art and science, and provides, in short, the framework within which the life of society can be carried on with the least possible friction and the maximum advantage possible. Thus Laski in his *Introduction to Politics* (p. 32) says: 'The power of the state can be justified only in terms of what it seeks to do. Its law must be capable of justification in terms of the demands it seeks to satisfy. The state presides over a vast welter of interests, personal and corporate, competing and cooperating. Its claim to allegiance must obviously be built upon its power to make the response to social demand maximal in character. It must strike such a balance of interest that what emerges as satisfied is greater than can be secured on any alternative programme.'

Criticism:

There is no doubt that the above justification of the State is much more satisfactory than those that we have previously considered. Never the less, it is open to criticism.

(1) Theories based upon utility are apt to take too narrow and materialistic a view of the State and to regard the State as 'a mere public utilities company'. We have considered this point of view in an earlier chapter and have said that the State is not a mere partnership for the attainment of certain material ends. The State should undoubtedly secure the material well-being of its members. But at the same time it has a moral and spiritual function to fulfil. It is 'a partnership in all virtue'. One of its ends, and, perhaps the most important, is the promotion of the 'excellence of souls (*5*)'. The State is one of the primary ethical institutions of society. To justify the State purely on the ground of utilityi s like saying that the family exists solely for conjugal happiness, the procreation of children, and the

rearing of human race. Both the family and the State have a moral purpose to fulfil. Both provide a life of fellowship and make the self-realisation of the individual possible.

(2) The utility theory is apt to regard the State as a mere means to the welfare of the individual, while as a matter of fact, it is both a means and an end. The State considers the welfare not only of existing generations but also that of generations yet to be. In this latter respect it may be regarded as an end in itself.

In spite of these defects, we may agree with Dr. Appadorai when he says that the theory supplies a slogan which gets implanted in the popular mind and which can serve as a touchstone in judging State action.

Necessity of Organisation

A particular form of the utilitarian justification of the State is expressed by some who emphasise the need for organisation. Primitive man did not know the value of organisation. What organisation he had was of an elementary character, and more or less instinctive in origin. But civilised times have witnessed the establishment of organisation for every conceivable purpose. Experience has taught us that the group can do certain things more successfully than the individual. We organise ourselves for the conducting of business, for the promotion of pleasure, of art, science, and religion, and for purposes of war and peace. We even organise to secure peace by force. The number of organisations in our modern society is innumerable, and the State is the most important and the most comprehensive of all of them. It is the one organisation which underlies all others and the one from which all others derive their necessary support. Such an organisation requires a set of rules and regulations for the realisation of its purposes, as well as an adequate physical force to make its will effective.

***Criticism*:**

While there is no objection to this justification of the State, it must be said that the criticisms mentioned above in connection with the utilitarian theory hold good here as well.

7. The Psychological View

Attempts have been made since the days of Aristotle to show that man has a political instinct and that it is a part of man's nature to be ruled. Man, it is said, is a 'political animal'.

Criticism:

(1) If this be so, how do we account for the fact that there are

those who deny that they have an instinctive sociability or political sentiment? Basing our argument on the history of the Eskimoes, who constitute a society, but do not have a state, it would seem that the State was not a universal necessity; (2) merely to assert that the State is rooted in human instincts is not enough. Not everything that is instinctive is necessarily good and worth preserving. As Willoughby has aptly pointed out, our problem in political theory is to justify political authority as humanly exercised, and to harmonise it with man's personal freedom. The psychological view does not help us in this task, for it does not show how, or by whom, political authority is to be exercised and how it is to be reconciled with individual freedom.

8. The Idealistic View

From the point of view of idealism which seems on the whole the most satisfactory theory, obedience to the State is justifiable because the State expresses the best in us. It is not an enemy of man, not even a disinterested observer, but the true friend of the individual. In obeying the will of the State we are obeying our own wills, purged and purified of their selfishness. In their true being, the State and the individual are identical. To use the language of Hegel, the State is the 'actualisation of freedom' or 'the embodiment of concrete freedom'.

From the idealistic point of view the State is an ethical institution. It makes possible free social life, without which man cannot realise himself fully. It is we ourselves in a different capacity. It is the natural expansion and development of the individual. It enables the will and reason of man to express itself. It furnishes the external conditions of the moral life. It gives 'unity, stability, and increasing self-consciousness to society as a whole (*81 : 148*)'. It is 'the organiser of rights and the guardian of social justice (*81 : 148*)'. Hence obedience to the State becomes a moral duty.

It is in this manner that T. H. Green justifies obedience to the State. He controverts the popular belief that the root of morality is man's conscience and that of political subjection is force. He rightly holds that both morality and political subjection have a common source, *viz.*, 'the rational recognition by certain human beings.... of a common well-being which is their well-being and which they conceive as their well-being whether at any moment any one of them is inclined to it or not, and the embodiment of that recognition in rules by which the inclinations of the individuals are restrained,

and a corresponding freedom of action for the attainment of well-being on the whole is secured (*29 : 124-125*)'. 'Both morality and political subjection imply the two-fold conception, (*a*) "I *must*, though I do not like" (*b*) "I must *because* it is for the common good which is also my good" (*29 : 124-125*).' Green goes on to say that simple fear can never constitute true obedience to the State. To represent simple fear as the basis of civil subjection is to confuse the citizen with the slave. A habit of subjection founded upon fear cannot be a basis of political or free society.

Criticism :

(1) It will no doubt be said that the view presented here is fanciful in as much as there is no actual State which answers to the picture painted. It may be asked, as Green has pointed out, 'Is it not trifling with words to speak of political subjection in modern State as based on the *will* of the subjects ? (*29 : 124-125*)' But as Green himself says, it is only to the extent to which the individual realises that the State serves a common interest of which his interest is an intrinsic part, that he is likely to become a loyal subject. If his patriotism is to be true and abiding, he needs to have a feeling for the State analogous to the feeling which he has for the family and home. We admit that such a feeling is very partially realised even in the best State. We do not argue, as Hegel did, that the ideal State is identical with the Prussian State of Hegel's day or with any other State. Never the less we contend that the State embodies, however imperfectly, the conception of a common good, and it is this conception which is the true source of political subjection.

(2) Those who are opposed to the idealistic justification of the State will probably argue that force creates the State and habit perpetuates it or that political subjection is in the interest of social expediency. There is no doubt that self-interest, force, and fear have played a considerable part in the creation and perpetuation of the State, but they have produced good results only so far as they have been 'fused with and guided by some unselfish element (*29 : XVI*)'. 'The fact that the State implies a supreme coercive power gives colour to the view that it is based on coercion, whereas the coercive power is only supreme *because* it is exercised in a State, *i.e.*, according to some system of

law, written or customary (*29 : XVI*).

(3) It may be further said that even if it be granted for the sake of argument that will is the basis of the State, it can be the basis only of the democratic State. How can people have a feeling for the State and an appreciation for the common good unless they actively participate in the legislative and administrative functions of the State? This is a forcible criticism, and we are bound to accept it as generally valid. Never the less we believe that even in a country which is not democratically governed, we may assume that general will is indirectly present so long as there is peace and order in the country and there is no general upheaval.

In the light of all that we have said, we come back to the conclusion that obedience to the State is obedience to the citizen's own better self and that even if it be not so in any particular case, it should be our constant endeavour to make it so.

The End of the State

The justification of the State is incomplete without a consideration of the end or purpose for which the State exists. In discussing this theme it is usual to distinguish between the immediate or proximate end, and the final or ultimate end. While it is easy to determine the former, the latter is more a matter of faith than of knowledge.

To the Greeks the purpose of the State was self-sufficiency. The State, they said, should provide for its citizens all that was necessary for their highest development and happiness. Plato regarded the State as a macrocosm in which the individual could find his proper place and perform the duties for which he was best fitted. The rulers and warriors should give their undivided attention to the highest well-being of the State, and to this end Plato laid down a communistic way of life for them. To the mind of Plato the State was a well-developed organism in which each individual and each class had a particular place to fill and was happy in so doing.

Aristotle believed that the purpose of the State was to secure the development of virtue in the citizens; but he, too, believed in the self-sufficiency of the Greek city-state, which was to produce the greatest happiness in the individual. Thus in his *Politics* Aristotle devotes a whole chapter to this theme. A free paraphrase of the

chapter is as follows:

The State exists not for the sake of wealth or security or society, but for the sake of a *good life*. If life were the only object of the State, slaves and brute animals might form a State, but they cannot, for they have no share in happiness or in a life of free choice. If alliance and security from injustice or exchange and mutual intercourse were the only objects, all who have formed commercial treaties would be citizens of the State. They do not have common magistracies, are not concerned with the wrong and wickedness of the other States, and do not endeavour to make the citizens what they ought to be. The State also takes into consideration *virtue* and *vice*. It is more than a mere alliance designed for the protection of life and property.

The State implies not only intermarriage, intercourse, exchange, and a common locality, but much more than these—*a community of well-being*. It is not a mere society, having a common place, established for the prevention of crime and for the sake of exchange. It is a community of well-being in families and aggregations of families for the sake of a perfect and self-sufficing life. Such a community is possible only among those who live in the same place and intermarry. The end is good life and the means are family connection, brotherhoods, common sacrifices, amusements, etc., that is friendship. The State is made up of families and villages having for end a perfect and self-sufficing life.

Political society therefore exists for the sake of noble actions, and not for mere companionship, and those who contribute most to such a society have the greatest claim to power.

The Romans did not speculate much on the end of the State. Most of their energies were absorbed in the building up of the Roman Empire. Rome came to be the centre of the Western World and of Western Civilisation, so much so that even after the fall of the Empire, her name and fame lasted for many centuries.

During the Middle ages, too, there was not much speculation regarding the end of the State. Ecclesiastical writers generally regarded the State as an instrument with which to defend Christianity against the attacks of infidels. Aquinas thought that the State existed in order to establish peace and unity and promote right living among the subjects. The state was valued as doing service to an end conceived in religious, and more particularly in theological, terms.

Serious discussion regarding the end of the State began only with

the modern times, with the rise of liberalism and the overthrow of the idea that the State was the partrimony of the Prince. When men began to realise that the State belonged to the people, there developed theories regarding the end of the State.

According to Hobbes, the purpose of the State was to maintain order and the right of property. Hobbes took such a gloomy view of the state of nature preceding the establishment of civil society that he held that any State was better than no State. Tyranny was to him preferable to anarchy. Locke, likewise, claimed that the purpose of the State was to maintain life, liberty, and property, by means of a known law and a common judge. When we come to Rousseau, we find a revival of the idea that the State exists in order to make good life possible for the individual, although he does not state it in this particular form. He is convinced that the State is not a mere matter of convenience for the gaining of utilitarian ends, but the highest expression of the best in man.

1. The End as General Happiness

Jeremy Bentham in the early part of the 19th century popularised the idea that the purpose of the State was the promotion of the greatest happiness of the greatest number. This utilitarian view is strongly held even to-day. It was largely responsible for a great number of reforms in the social and political life of 19th century England. In particular it brought about reforms in the poor law, land law, prison management, divorce law, franchise, and popular education. Some writers have substituted 'greatest good' or 'general welfare' for 'greatest happiness'. In spite of this improvement, the theory is in danger of sacrificing the minority to the majority. The excellence of the few may be made subservient to the incompetence of the many. The theory tends to develop mediocrity in society and to crush individual excellence. Besides, the term happiness in the sense of pleasure is difficult to define. No two individuals are agreed on what happiness means. Therefore, to assign to the State the task of measuring pleasures and of promoting general happiness seems an impossible task. A knows what gives him pleasure and B knows what gives him pleasure, but neither A nor B knows what general pleasure would be like. Furthermore, the Utilitarian theory is individualistic in its outlook and does not take into account the organic nature of society. In spite of these serious defects by using terms like happiness in a very loose way, the theory has helped to bring about much humanitarian legislation. As Gilchrist observes, it

is 'a commonsense expression of the ends of legislation but as a complete expression of the end of the state it breaks down on close examination (*28 : 427*).'

2. The End as Maintenance of Order

In the 19th century many other views were proclaimed regarding the end of the state. One of the most popular of these was the individualistic view that the State existed merely to maintain law.* Some writers extended it to include order and security. It was argued that each individual should be left to work out his own salvation free from the activity of the State and that the State should simply provide external and internal protection so that men might live together peaceably. This theory presents too narrow a view of the end of the State. Undoubtedly it is the business of the State to provide security of person and property, but it is not the complete end. In its practical working, the theory tends to justify *in toto* things as they are and to discourage progress. It is in danger of perpetuating the *status quo* whether the *status quo* is worth perpetuation or not.

3. The End as Progress

Some have defined the end of the State as progress. This theory does not say much. It does not state clearly what the end is. The term progress is meaningless apart from the end or goal towards which progress is made. We must determine the end in order to make progress possible.

4. The End as Social Service

Those with a socialistic turn of mind claim that the State exists in order to promote 'certain social services, which have nothing to do with protecting the individual from external attacks, nor the maintenance of law as between the individuals in the State, but which have to do primarily with the social interests of the community (*19*).' Such an end, we find, is coming more and more to the forefront in the practice of modern states, which undertake the care of public health and public morals and the promotion of the economic interests of the people. A large group of these writers propose to extend the power of the State so as to include the ownership and management of the means of production and distribution. The chief criticism of this view is that it is a theory of the limits of State action rather than of the final end of the State.

* Kant considers the end of the State to be the maintenance of law and the securing of the freedom of its individual members.

5. The End as Justice

A great many modern writers regard justice as the end of the State. These are usually idealists, but not all idealists accept justice as the political end.

Hetherington and Muirhead in *Social Purpose* claim that the organisation of justice has always been the main function of the State. They interpret justice in the sense of 'an order of life in which human personality and its ideals can be realised'. They further say that 'at bottom, the state is the expression of a view of the good life for men .... In this larger sense, then, we may still hold that the end of the state is the organisation of justice, and that therefore it is pre-eminently a moral institution (*81 : 146*).'

While we are prepared to accept the general statement that the end of the State is ethical, we cannot help feeling that justice as a political end is too narrow a view. Hetherington and Muirhead use justice in a very wide sense embracing the whole field of morality, but this is not the ordinary usage of the term. Further, as Gilchrist observes, 'Justice is more a condition dependent on the realisation of the true end. Complete justice, too, involves absolute knowledge, which belongs only to God (*28 : 47*).'

Is the State an End or a Means ? Many other theories have been advanced regarding the end of the State. It is not necessary that we examine all of them. A question which has engaged the special attention of modern writers is this : 'Is the state an end in itself or is it only a means ?' The ancients, particularly the Greeks, regarded the State as the highest fulfilment of human life and as an end in itself. The present-day distinction between the individual and the State was altogether foreign to them because the conditions under which they lived were totally different from ours.

The view that the State is an end in itself was revived in recent times by Hegel, who identified the will of the individual with the will of the State. This view has been carried to its logical conclusion by Fascism. Article I of the Italian Labour Charter read : 'The Italian Nation is an organism having ends, a life and means superior in power and duration to the single individuals or groups of individuals composing it. It is a moral, political and economic unit which finds its integral realisation in its Fascist Stage.'

Over against such absolutism is the view of individualists, to many of whom the State is only a means for the promotion of the welfare of the greatest number of individuals. The chief objection to such a view is that the State does not concern itself entirely with the wel-

fare of any one generation. It takes into account the welfare of generations yet to be, and in ensuring this distant end it imposes heavy burdens upon its citizens. Individual welfare, it is clear, is not the only end of the State.

The general consensus to-day is that the State is both an end and a means. Thus Willoughby, in *The Nature of the State*, argues that if we look at the state purely from the individualistic point of view, 'it is only a means, an instrumentality, or an expedient through which the highest possible development of humanity is obtained. But if the state is considered an institution distinct and apart from the citizens who compose it, it is, of course,... an end in itself (*81 : 70*).' Bluntschli explains the double nature of the State by a striking analogy. 'A picture is often means of obtaining a livelihood for the artist. Yet a true work of art is to the artist the aim of his higher effort, he sees in it the expression of his most vivid feeling, the embodiment of his ideal. In this way it has an end in itself.' Similarly the State is means to the well-being of the individual as well as an end in itself ,or it looks far beyond the well-being of any particular group of individuals or any one generation.

In considering the end of the State, it is profitable to distinguish between its general or fundamental end and its particular ends, as also between its ultimate or remote end and its immediate or proximate ends. Adopting such a classification, Holtzendorff distinguishes between the actual ends of the State and the ideal ends. The State, he says, should first of all develop its national power against other States as well as against individuals and groups of individuals within the State. In the second place, it should secure individual liberty by marking off a sphere within which the individual can develop himself without interference from the government or other individuals. Finally, it should promote general welfare by maintaining peace and order and by aiding and educating its subjects.

Bluntschli states the proper end of the State is 'the development of the national capacities, the perfecting of the national life, and finally its completion, provided, of course, that the process of moral and political development shall not be opposed to the destiny of humanity.' According to this view, it would appear that the immediate end of the State is the maintenance of national power, and its development, and the final end, 'the destiny of humanity'. It is interesting to note that during the Great War when one would have expected the nationalist view to receive the greatest attention it was the wider end

of humanity which made the most powerful appeal. The nationalist view, pure and simple as contained in the early part of Bluntschli's definition, raises the same objections as those to which pure and simple individualism is open. Both of these may develop interests detrimental to the welfare of society as a whole. As Gilchrist observes: 'In the modern world we are more and more tending to look beyond the (national) boundaries for an ideal. Internationalism is gradually replacing nationalism (*28 : 430*).'

A recent American writer, Burgess, speaks of the primary, secondary, and ultimate end of the State and regards each of these as being in turn a means to the accomplishment of the succeeding ends. The proximate end, says Burgess, is government and liberty. The State should first and foremost preserve itself and its individual members. But as soon as this end is attained and the law-abiding habit becomes fixed, the State should mark off a sphere of individual liberty and protect it against all encroachments and increase it from time to time. The secondary end, growing out of the proximate end, is the perfecting of the principle of nationality of the development of the national genius. For the accomplishment of this end, nation-states, resting on natural, physical, and ethnic foundations, are the best instruments. The final end is the perfecting of humanity or the advancement of the civilisation of the world at large.

Criticising this point of view, Garner remarks: '...here again we have what seems to be a confusion of ends with means. It is difficult to see, for example, why the establishment of the Government should be considered as an end to be realised rather than the means through which ends are sought (*23 : 73*).' According to Garner, the triple end of the State is: firstly, the advancement of the good of the individuals; secondly, the promotion of the collective interests of individuals in their associated capacity; and finally, the furthering of the civilisation and progress of the world.

Select Readings

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7

THEORIES OF RIGHTS

WHAT IS meant by rights ? How have we come to possess rights ? How are rights to be distinguished from wrongs ? These are questions which interest the ordinary citizen just as much as the serious student of political science.

We may preface our discussion of the subject by three preliminary observations which should underlie any sound view of rights. In the first place rights and duties are correlative conceptions, that is, every right carries with it a corresponding obligation. Any right on A's part always implies an obligation on the part of B to respect that right. As Mr. V. S. Sastri aptly points out in his *Kamala Lectures*, rights and duties are the same thing looked at from two different points of view. They are like the two sides of a coin. Rights depend upon duties. 'It is only in a world of duties that rights have significance (*81 : 119*).'

Our second observation which is a corollary of the first is that every right requires social recognition. Without such recognition, rights are empty claims. Rights do not exist in a vacuum, so to speak. They require the sanction of society. Social recognition does not mean mere legal recognition, although it often does, and should, include that. Social recognition must have a moral basis behind it. It must rest upon a common ground or common interest. All rights must in the last resort be relative to some common end or moral good.

Thirdly, a right is not a selfish claim. It is a disinterested desire. It is something which is capable of universal application. In asserting my right, I am really rendering a public service, and when I fight for the rights of others I may do so at great personal loss. No true right is based on individual caprice. 'The matter is one of fact and logic, not of fancies and wishes (*5 : 197*).'

Older societies as a rule did not recognise rights to any great extent. They had only petitions and charities. Modern democratic societies, on the other hand, give a very important place to rights. 'The Revolution (French) did not ask for charity ; it demanded the rights of man (*10 : 152*).' Some of our present-day constitutions, such as the

Irish Free State and Indian constitutions guarantee certain fundamental rights to their citizens. Rights have a tendency to grow. Even our privileges tend to become rights in course of time. New rights frequently come into being, *e.g.*, the right to work, the right to strike, the right to retain one's job when one is on a strike, etc.

Among the various explanations of rights which have been offered from time to time, we can distinguish five main theories. These are :

(1) the theory of natural rights ;
(2) the legal theory of rights ;
(3) the historical theory of rights or the theory which bases rights on customs ;
(4) the social welfare or the social expediency theory of rights; and
(5) the idealistic or personality theory of rights.

1. The Theory of Natural Rights

This is the earliest theory of rights. It goes back to the Greek times. It holds that rights belong to man by nature. They inhere in him. They are as much a part of man's nature as, say, the colour of his skin. They do not require any elaborate explanation or justification. They are self-evident truths. One simply asserts them dogmatically. Rights are absolute. They are pre-civil and, according to some, even pre-social. They are inborn. They can be asserted anywhere and everywhere. Thus, Locke says, all men are born free and rational. God has given authority to no man to compel another to carry out his orders. Likewise, the right to life, the right to liberty, the right to judgment, the right to carry out one's judgment, etc., are all natural rights.

This theory of natural rights has played a very important part in the history of human development. Among English writers, John Locke and Thomas Paine made much use of it. In practical politics it exerted great influence on the constitutional struggles of America and France. Thus the Virginian Constitution declares: 'That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot by any compact deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety (*66* : *5*).' The French Declarations of 1791 and 1793 use similar language. The Declraation of 1793 names liberty, equality, security, and property as among the important natural rights of man. The American Declaration of Independence (1776) holds these truths to be self-evident that all

men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the persuit of happiness.

The social contract writers in general are advocates of the theory under consideration. They assume that man had certain natural rights to start with, and that, at the time the contract was formed, he surrendered some of those rights to a superior authority in order to be able to safeguard the rest. This point of view is clearly seen in Locke. In spite of his advocacy of the social contract theory, Hobbes adopts a totally different point of view. According to him, one's natural rights are one's natural powers. In the state of nature, he says, 'every man has a right to everything, even to one another's body (*35: Ch XIV*).' The natural state is purely animal condition.

Herbert Spencer, whose political theory has a very strong resemblance to the thought of the social contract writers, asserts that his study of the evolution of life in both the animal and man leads him to the conclusion that the one fundamental right of all men is the right to equal freedom, according to which, every man is free to do that which he wills, provided he infringes not the equal freedom of others.

The theory of natural rights played an important part in the 17th and 18th centuries, and is even to-day far from dead. In many quarters of the world, the right to food, clothing, and shelter, the right to work, and political rights like the right to vote are asserted dogmatically and carry with them the flavour of natural rights.

Criticism :

(*a*) the most obvious criticism of the theory is that it is very difficult, if not impossible, to define the term 'natural'. D. G. Ritchie has written a whole volume on Natural Rights and brings out clearly the various senses in which the term has been used. Some of the senses which he finds have been assigned to the terms are :

(1) Nature = the whole universe
(2) Nature = the non-human part of the universe
(3) Nature = the ideal (or completed purpose)
(4) Nature = the original (the incomplete)
(5) Nature = the normal or average.

At this point we naturally ask, In which of these various senses are we to understand the term 'nature' in speaking of natural rights ?

If we probe into the question further, we find that 'natural' is

contrasted (*i*) with what is artificial or conventional, (*ii*) with what is spiritual (*i.e.* opposed to revelation), (*iii*) with the civil state. Leaving out the second interpretation which does not concern us here, we can easily see how hard it is to assign any precise meaning to these relative terms. To use the paradoxical language of Prof. Hocking, it is natural for human beings to be artificial. Wearing clothes, which was artificial at one time, is natural today. If 'natural' means the whole process of nature—its normal meaning—the civilised condition is just as much natural as the savage or barbarous condition. There is no reason why we should equate 'natural' with 'primitive.' Diogenes, in order to be 'natural', lived in a tub, and we live in houses. There is no necessary inconsistency between nature and convention. The civil state is just as natural as the pre-civil State.

Cicero, following the Stoics, uses the term 'natural' to describe the feelings implanted by God and Nature in the heart of every man. This is what is more commonly known as the voice of conscience. Needless to say, this standard, like the other standards that we have discussed already, is subjective. To some, wife-beating is a matter of conscience, just as much as wife adoration may be to others. Those following the Stoics and Cicero have interpreted nature to mean common sense or the universal opinion of mankind. This interpretation is scarcely more satisfactory. The trouble with common sense is that it is not common and its verdict varies with individuals.

(*b*) Seeing that the terms 'nature' and 'natural' are indefinite and are used rather loosely, we are not surprised to find that, among the supporters of the theory of natural rights, there is an ambiguity as to what these rights are. There is no official or complete or generally agreed-upon list of natural rights. Some justify slavery as natural; others condemn it as being unnatural and artificial. Some assert that by nature men and women are equal; others deny it. Some hold that men are naturally good; others believe that by nature they are wicked. Some regard private property a natural right; others deny it altogether. When we come to the relations between sexes, we find a multitude of opinions, all claiming to be based upon nature. Monogamy, polygamy,

polyandry, free love, and transient marriage relations have all been supported on the basis of nature and on the analogy of the lower animals. In the light of all this, we are inclined to agree with Ritchie's statement : 'If you appeal to nature, we may not be able to prove you wrong in your own court of appeal; but neither can you prove yourself right (*66 : 105*).'

(*c*) The so-called natural rights conflict with one another. The French Revolution declared liberty, equality, and fraternity to be the absolute rights of man. They are supposed to be self-evident truths. But when we began to apply them in practice, we are faced with endless difficulty. In no rational system can there be a place for absolute liberty and absolute equality. If wé begin society with absolute liberty, we soon get inequality. On the other hand, if we start with absolute equality, liberty soon vanishes. The theory of natural rights cannot give us a sure or self-evident way of reconciling liberty and equality. We are, therefore, obliged to turn to other quarters for such reconciliation.

Or turn to the question of property. If property belongs to all, as is assumed by supporters of the theory of natural rights, we must know what that right implies. Does it mean private property ? If it does, does it include the right to dispose of one's property as one wills ? The right to do exactly what one wills with one's own, even to the extent of abusing it ? Has a milk dealer, for example, the right to empty cans of milk into the gutters in order to maintain a high price ? Can a mill-owner close his mill any time that he likes without giving ample notice to his employees ? These are questions which cannot be answered by the theory of natural rights. As Prof. Hocking points out, my natural right does not tell me what my limits are. The trouble with such rights is that they present us with too many absolutes.

(*d*) The implication of the theory of natural rights is that the State and social institutions in general are artificial and that they have robbed man of certain inherent rights which belonged to him in a state of nature. Rights represent 'the recovery of a lost inheritance (*Laski*)'. This is an absurd position to take. The State is a natural growth. It is not a secondary product, much less an intruder and a usurper.

Institutions are not artificial. They are 'embodiments of ethical ideas (*Bosanquet*)'. The logical conclusion to which the theory of natural rights leads is extreme individualism. It is capable of being used both by anarchists and conservatives.

(*e*) The real flaw in the theory is that it assumes that we can have rights and obligations independently of society. This is an erroneous conception. We have rights only as members of society. Apart from society, we may have powers but not rights. Rights antecedent to society are meaningless, for the simple reason that a right is nothing without a correlative obligation. 'Rights arise from the fact that man is a social being (*28 : 134*).' Membership in a common order is the foundation of rights, and, therefore, pre-civil or pre-social rights are altogether meaningless. In the words of Bosanquet, 'a right. . .is a claim recognised by society and enforced by the State (*5 : 191*).'

(*f*) Arguing from the idealistic point of view. Lord criticises the theory of natural rights as placing undue emphasis on 'the nature of Nature and ignoring the nature of Right'. This is a valid criticism. Advocates of the theory are at great pains to elucidate the meaning of nature, but forget that a careful elucidation of 'right' is just as essential, if not more so. Rights have a meaning only in relation to the part the individual has to play in the human drama.

Truth in the Theory. In spite of the above obvious defects, the theory of natural rights contains a large amount of truth. If by natural rights we mean rights which we had in the dim, pre-historic past, and which we have since lost, it is an absurd conception. If, on the other hand, we interpret natural rights to mean ideal rights or moral rights which we ought to have in the future and in the light of which we can criticise existing conditions, the conception is a very valuable one. Thus, *e.g.*, the right to work is 'a natural right' in the sense that in any well-ordered society it is desirable that every one has the opportunity to earn enough at least for his food, clothing and shelter. It is not a right in the sense that man had it in the pre-historic past. We may therefore define Natural rights as those conditions, whether afforded by human agency or not, which are required for the development of individuality (*54 : 254*). But this is not the sense in which natural rights have been ordinarily used or understood.

Natural rights in the best sense are rights which are necessary to the ethical development of man as man. As Laski observes, rights are not historic conditions possessed by man in the childhood of the race, but since lost.

2. The Legal Theory of Rights

According to this theory, rights are creations of the State. What the law gives me is my right, and what the law does not give me is not my right. Rights are not absolute. They are not inherent in man at all. They are relative to the law of the land. My right to life, liberty, property, etc. is determined by the State. Rights are artificial.

This theory is opposed to the theory of natural rights. Its advocates argue that the so-called natural laws either agree with the laws of the land or disagree with them. If they agree, they are superfluous, and if they disagree, they are futile. Therefore, in either case, they can be ignored. It is no wonder that Bentham, who is an advocate of the legal theory, ridicules natural rights as being 'nonsense upon stilts'.

We find a trace of this theory in Thomas Hobbes, who holds that the fundamental right of every individual is that of self-preservation. This right, Hobbes believes, can be better maintained by the State than by the individual. Therefore, at the time that the contract is formed, people unconditionally surrender all their rights (except that of self-preservation) to the Sovereign, and whatever the Sovereign gives them is their right. Whenever the law does not put a restraint, the subject retains his natural right. But this does not mean that the Sovereign's power over life and death is superseded. He can step in at any time and limit the liberty of the subject. The subject has power wherever the law does not regulate.

Criticism :

(*a*) We refuse to believe that the mere decree of the State can make anything right. With Prof. Hocking we may ask the question, Can law make bribery and corruption a right ? Or, can law re-establish *satee* ? These are questions which carry with them their own answer. It is therefore clear that the law can operate only within limits. Laski goes so far as to say that rights are independent of State recognition. This is rather an extreme statement. Spencer's point of view is that the State does not create rights ; it exists in order to maintain rights. N. Wilde remarks : 'The law does

not create our rights, but only recognises them and protects them. The rights themselves exist whether they are thus legalised or not. They are enforced because they are rights, and are not rights because they are enforced.' For ourselves, we believe, that what makes a claim a right is not the mere fact that it is recognised by law, but that it is morally justifiable. A typical right should combine legal and moral recognition.

(*b*) To say that the State is the sole creator of rights is to make it absolute. However high a place we may be prepared to give to the State we are not prepared to go so far as that. Technically, no doubt, the sovereignty of the State is supreme. But there are certain practical limitations imposed upon it by customs, traditions, history and morality. Laski holds : 'The maintenance of right is much more a question of habit and tradition than of the formality of written enactment.' Law is often determined by the customary rule of the community. Not infrequently it is simply the formulation of customs. Justice in very many cases follows customs. Therefore, to argue that all rights are derived from law is unsound.

Besides, the law of every country is subject to constant revision. This shows clearly that law is not the final creator of rights. Higher than law is our conception of right and wrong. As Lord aptly puts it : 'A moral order of some kind is the necessary pre-supposition of rights. Apart from it there may be powers, influences, assertions, and efforts, but they are not rights.' Or, again, 'Rights must have a foundation of *right* as against *wrong*.' In the words of Prof. Hocking, 'There is a logical distinction between what the law is and what it ought to be.'

In extreme cases, the individual may even resist the State. Laski calls it the 'right' of resistance, while T. H. Green would regard it as the 'duty' of resistance.* According to Laski, the individual can have rights against the State, just as much as the State can have rights against the individual. 'My duty...to the State is, above all, my duty to the ideal

* Luther and Colvin, however, taught passive submission to the established political system

the actual State must seek to serve (*47 : 96*).'

(*c*) Some of the advocates of the legal theory of rights seek to overcome the difficulty by saying that the State is only the creator of legal rights. But when they say this they are not saying anything profound. They are guilty of tautology. It is like saying man begets a human child. The defect with the legal theory is that it does not cover the whole scope of rights. Whether rights are derived from history, customs or laws, they all require a moral basis. The legal theory does not enable us to decide whether the rights that are recognised are the rights that ought to be recognised. It does not help us to make the State what it should be. Therefore, it seems clear that we need an external standard for judging the State, and that standard is supplied by law of personality. 'Personality', in the words of Lord, 'is more than citizenship.' Looking at the question from the point of view of social utility, Laski remarks, 'A legal theory of rights...needs, for its understanding, a test in terms of a criterion external to itself. When we say that a man has the right to bestow his possessions as he wills, we state a fact; but we do not thereby determine whether he ought to have that right. When we say that a deaf mute has the right to marry, we mean that no church and no register can refuse, in proper circumstances, the performance of the necessary ceremonial, but we do not mean that we think he ought to have the right. At the back of any legal theory there is a system of presumptions each one of which requires a careful explanation before it can be admitted as valid for politics (*47 : 91*).'

Truth in the Theory. (*a*) While the arguments advanced above go to show that the legal theory cannot give us a satisfactory view of rights, the theory cannot be dismissed lightly. We are not prepared to go to the extent of saying that rights are possible apart from the State. Claims which are essential to the moral development of man, and which are violated or ignored by the State, can at best be only potential rights. They are the raw material or ground of rights, but are not full-fledged rights. It is desirable that in democratic countries, at least, where presumably the general will of the people can bring about necessary changes in a peaceable manner, all our rights should win legal recognition. But this is not the same as saying that whatever

has legal recognition behind it is necessarily a right. It may be only a technical right. In days gone by landlords in England were allowed to ride roughshod over their tenants' property. Yet nobody today would justify it or dare claim it as a right. Conversely, new rights may have to be created, and we may have to go through a period of constitutional agitation, struggle, and even the 'duty' of resistance before such rights are recognised.

(*b*) As said already, a right should have both a legal and a moral aspect. To quote from Bosanquet, 'A right...has both a legal and moral reference. It is a claim which can be enforced at law, which no moral imperative can be ; but it is also recognised to be a claim which ought to be capable of enforcement at law, and thus it has a moral aspect... A typical 'right' unites the two sides. It both is, and ought to be, capable of being enforced at law (*5 : 187*).'

From the legal point of view, Holland defines right as 'one man's capacity of influencing the acts of another, by means not of his own strength, but of the opinion or the force of society'. A legal right in the strictest sense, he says, is 'a capacity residing in one man of controlling with the assent and assistance of the State, the actions of others (*38 : 61-62*).' This of course, is an incomplete view of rights and needs to be supplemented by the moral view. On the analogy of Holland's legal definition, Ritchie defines a moral right as 'a capacity residing in one man of controlling with the assent and assistance, or at least without the opposition, of public opinion', or as 'the claim of an individual upon others recognised by society, irrespective of its recognition by the State (*66 : 78-79*).'

3. The Historical Theory of Rights

This theory can be summed up in the sentence : 'History makes right.' It holds that rights are the crystallisation of customs. We are familiar with the phenomenon of long-standing customs assuming in course of time the form of rights. If a person has been receiving a birthday present from a friend for a number of years, he soon comes to imagine it as a right. What is pure gratuity becomes a custom, and one expects it as a matter of course. The right of way on the public road is a customary right. In cases of divorce the amount of alimony is adjusted not according to the cost of living, but according to the kind of life to which a person is accustomed. As Ritchie remarks, we often find that 'those rights which people think they ought to have are just those rights which they have been accustomed to have, or which they have a tradition (whether true or false) of having

once possessed. Custom is primitive law (*66 :82*).'Many of the so-called natural rights, when scrutinised carefully turn out to be claims which have 'the sanction of the longest and the least broken custom, (*66 · 82*) while claims, which are of quite recent growth or are not widely adopted, are regarded as 'conventional'.

Edmund Burke has observed that the French Revolution was based on the abstract rights of man, while the English Revolution was based on the customary rights of Englishmen. This statement contains much truth. While as an historical fact the French Revolution was provoked by the conditions which prevailed in 18th century France, it had for its battle-cry the abstract principles of liberty, equality, and fraternity, applicable to all men. The English Revolution, on the contrary, was simply a re-assertion of the rights that Englishmen had enjoyed from very early days and which had found expression in such documents as the Magna Carta and the Petition of Right. In fact, the entire constitutional history of England is summed up by some writers as a struggle for 'liberties', as against liberty.

Criticism :

No doubt a large number of our rights are rooted in customs. But to say that all our rights can be traced back to ancient customs is a clear exaggeration. The late Prof. Sumner of Yale claims that the *mores* or customs of a people can make anything right. We do not accept this point of view. In criticising it, Hocking asks: 'Was slavery right when it was lawful ? Was infanticide right ?' and his answer is in the negative. According to him, although slavery was customary in most parts of the world, it was never right. The weight of academic opinion, however, is that slavery was a relative right, *i.e.* right at one time, but not right now when the moral sense of man is more fully developed. The difficulty with this point of view is that if right is always in relation to custom, reform is impossible. The abolition of *Satee*, the Sarda Marriage Act, and temple entry for the depressed classes are to a large extent violations of the well-established customs of the country. Yet enlightened public opinion has no hesitation in supporting such reforms. Prof. Hocking rightly concludes that it is just as foolish to say that custom is always right as to say that law makes right. There is a further court of appeal, and this court is the law of personality. The same author goes on to say that the historical theory either gives no guidance at all, or else false guidance. It must, therefore, remain 'as rather helpless method unless lighted up by independent sources of interpretation.' 'History cannot be ignored ; but

history cannot be relied on alone (*36 : 7*).' In the very nature of the case, history cannot give an absolute right or standard.

The Social Welfare or the Social Expediency Theory of Rights

From the point of view of this theory rights are conditions of social welfare. They are the creations of society. Advocates of the theory like Dean Pound and Prof. Chafee hold that law, custom, natural right, etc., should all yield to what is socially useful or socially desirable. Rights, says Prof. Chafee, are determined by a balance of interests. The right of speech, for instance, is not unlimited. It is determined by considerations of social expediency.

The Utilitarians in general support this theory of rights. Bentham and Mill expressly advocate the principle of utility 'in opposition both (1) to the mere following of custom or external authority, and (2) to the arbitrary appeal to the voice of nature speaking in the human heart—an appeal which can be made in support of abuses, as well as in support of the revolt against them (*66 : 87*).' They set up the principles of 'the greatest happiness of the greatest number' as the criterion by which to judge of what ought to be. They believe that utility can be determined by means of reason and experience.

Following up the Utilitarian tradition in a very much modified form, Laski makes the test of rights utility, and defines the utility of a right as 'its value to all the members of the State (*47 : 92*).' According to him, the claims which the State must recognise 'are those which in the light of history, involve disaster when they are unfulfilled (*47 : 93*)'. 'Our rights are not independent of society but inherent in it. We have them, that is to say, for its protection as well as for our own (*66 : 94*).' 'Rights, therefore, are correlative with functions. I have them that I may make my contribution to the social end. I have no right to act unsocially. I have no claim to receive without the attempt, at least, to pay for what I receive. Function is thus implicit in right (*47 : 94*).' I have...no right to do as I like. My rights are built always upon the relation my function has to the well-being of society; and the claims I make must, clearly enough, be claims that are necessary to the proper performance of my function. My demands upon society, in this view, are demands which ought to receive recognition because a recognisable public interest is involved in their recognition (*47 : 95*).' 'I cannot have rights against the public welfare, for that, ultimately, is to give me rights against a welfare which is intimately and inseparably associated with my

own (*47:96*).'

Criticism:

The social welfare theory of rights no doubt has a great deal to commend it. We consider it the best of the four theories that we have discussed so far. Nevertheless, it has some serious defects.

(*a*) Public welfare is undoubtedly a good test of rights. But difficulty arises when we begin to define the term 'public welfare'. Does it mean 'the greatest happiness of the greatest number', majority interest, public opinion or what the government of the day considers to be the common good ? Even if it means any of these, it does not help us much, because these terms are equally vague and indefinite. 'Greatest happiness', as such, cannot be measured. The community, as such, has no feeling.

(*b*) Another defect of this theory is that social welfare may infringe on what we call our individual rights. It may lead to the position that it is right to do a little injury to an individual in order to do a great deal of good to the community — to the doctrine that the end justifies the means. It may mean in practice general welfare overruling what is admitted to be a private right. The principle of social expediency is a dangerous principle with which to work. Fortunately, in a good many cases individual right coincides with general welfare. Trouble arises only when the two conflict. When such conflicts arise, advocates of the social welfare theory are bound to prefer common interest to individual good. Prof. Hocking tells the story of a rear-admiral who, when asked what he would do if he were called upon to sacrifice an innocent man under his charge for the sake of the general morale, had no hesitation in saying that he would sacrifice him. What does it matter if one life is to be thrown away for the sake of preserving general discipline and ensuring the safety of the group ?

For ourselves we believe that this is a mistaken point of view. Extreme public necessity cannot make anything right. The Supreme Court of the U. S. A., was perfectly justified in deciding in a case in which certain ship-wrecked mariners killed one of their mates for food that under no condition should a person be killed. As N. Wilde observes: 'If rights are created by the grant of society, the individual is without appeal and helplessly dependent upon its arbitrary will (*81: 124.*')

5. The Idealistic or Personality Theory of Rights

From the point of view of this theory, rights may be defined as the outer conditions essential to man's inner development. Apropos of this, Krause (quoted by Green) describes the system of rights as 'the organic whole of the outward conditions necessary to the rational life (*29 : 35*)'. Writing in the same vein, Henrici (also quoted by Green) defines a right as 'that which is really necessary to the maintenance of material conditions essential to the existence and perfection of human personality (*29 : 35*)'. 'A right', says N. Wilde, 'is a reasonable claim to freedom in the exercise of certain activities (*81 : 115*).' All this means in simple language that without rights no man can become the best self that he is capable of becoming. The supreme right of every man is the right of personality. By this we mean that it is the right and duty of every human being freely to develop his full potential. Every other right is derived from this one fundamental right. Even such important rights as the right to life, the right to liberty, the right to property, etc. are not absolute rights. They are conditional or presumptive. They are relative to the right of personality. Thus, I have a right to life only to the extent to which it is necessary for my highest development. I have no right to commit suicide, for I can never tell with certainty that I have reached the highest perfection possible for me. The moment I abuse my right society is perfectly justified in taking it away from me. Green speaks of rights as powers 'necessary to the fulfilment of man's vocation as a moral being (*29 : 43*)'.

This theory looks at rights from a highly moral point of view. Rights are powers which I can claim from society on a moral plane. They are rooted in the mind or soul of man. They are powers granted to me by society in order that I may, with others, realise a common good of which my good is an intrinsic part. This truth we expressed earlier by saying that every right requires social recognition. To put it more explicitly, every time I claim a right I must be able to establish two things. In the first place, I must be able to convince society that the right which I claim is absolutely necessary for my self-development. Secondly, I must convince society, that in making such a claim, I am not in any way interfering with the similar claims of others to their self-development. Thus, when I claim a right to life, it means (*a*) that I claim it of some one, (*b*) that I am willing to respect the same or similar right in others, and (*c*)

that I give a tacit undertaking to society that I shall use this right in my truest interest. It is in this sense that we must understand the statement that rights and duties are correlative. Rights are therefore derived from membership in society. Nobody has a right to do as he likes. As N. Wilde puts it: 'A right is a freedom of action possessed by a man in virtue of his occupying a certain place and fulfilling a certain function in a social order (*81 : 12*).'

Stating the same truth in other words, we may say that every right has for its basis a rational or responsible wish. Whimsical or irresponsible wishes can never become rights. My wish for anything should be coincident with some wish of the person or persons to whom I address my claim. In the words of Prof. Hocking, 'a right is a claim of any wish for fulfilment which is coincident with a common social interest.' Because every true right has a moral basis I can claim my right with a consciousness of power over the addressee (*i.e.* the person of whom I claim the right), even though physically I may be the weakest of human beings. In the fable of the wolf and the lamb, the wolf certainly had a 'natural' right to the flesh of the lamb, but the lamb made a rational and moral appeal to the highest in the wolf. Likewise, I should not fish in forbidden waters, because in so doing I act contrary to the dictates of my conscience, and thereby violate the law of my personality. Dr. Hocking remarks that whenever one person claims a right against another, he says to that person: 'If you infringe my rights you hurt yourself in a very central place.' Slavery injures the slave-holder even more than it injures the slave. What the slave suffers is to a large extent physical, while the injury sustained by the slave-holder is moral. In recognising the rights of others I honour my own strength, In killing an innocent person I kill some thing of myself.

Criticism and Appreciation :

(*a*) On the whole, the idealistic or personality theory of rights seems most satisfactory. Difficulty may arise when we begin to reduce the conception of personality to practical terms. It may be asked. By what standard is the State to judge the conditions required by each of its citizens for his fullest self-development? Is not the idea of personality after all a subjective idea? What do we know of other people's destinies? These are no doubt weighty objections. Our answer to them is that according to the idealistic point of view, the State does not offer to provide for man whatever will tend to promote his good life. Assuming that

everybody tries to become what he is capable of becoming, it grants to all certain minimum rights, and leaves each person free to make an individual use of them. It recognises that elementary rights must be the same for all and that differentiation can arise only after these are secured.

(*b*) It is conceivable that to a very large extent the social welfare theory and the idealistic theory, in their relation to rights will go hand in hand because individual good and social good are intimately related. But if and when individual good and social good come into conflict, the idealistic theory will go one way and the social welfare theory another. The idealistic theory refuses to sacrifice any human being to the development of someone else. It believes with Kant that no man is to be treated as simply a means to another's end: it calls upon everybody to treat humanity in his own person and in the persons of others always as an end and never merely as a means.

(*c*) One of the chief merits of this theory is that, unlike the theory of natural rights which posits too many absolutes, and the other three theories which posit no absolutes whatever, it lays down one absolute right, *viz.*, the right of personality, and derives every other right from it. Because there is only one absolute right there is no inner contradiction, as in the case of the theory of natural rights. Besides, this theory furnishes a safe test of rights which can be applied at all times, and herein it is superior to the legal, historical, and social welfare theories. The one absolute right of all human beings is the right of personality. It is invariable. It is independent of time and place. As Dr. Hocking says, it holds against God himself. An argument which this writer urges in favour of immortality is that God or the cosmological creator who is responsible for my being here is in honour bound to give me further opportunity to continue and complete the upward struggle which I have begun on earth and thus fulfil the law of my personality.

Select Readings

Bosanquet, B.—*The Philosophical Theory of the State*—Ch. VIII, Section 6.

Burns, C. D.—*Political Ideals*—Ch. VII.
Gilchrist, R. N.—*Principles of Political Science*—Ch. VI.
Green, T. H.—*Lectures on Principles of Political Obligation*—Section A.
Hocking, W. E.—*Law and Rights.*
Laski, H. J.—*A Grammar of Politics*—Ch. III.
Lord, A. R.—*The Principles of Politics*—Chs. VIII-X.
Ritchie, D. G.—*Natural Rights.*
Wilde, N.—*The Ethical Basis of the State*—Ch. VI.

8

PARTICULAR RIGHTS

A. The Right to Life

The particular rights which we take up for detailed consideration are the Right to Life, Liberty, Property, Equality, Political Rights, and the 'Right of Resistance' to the State. The most fundamental of all rights is the right to life, for without it man can have no other rights. According to T. H. Green, the right to life and the right to liberty together constitute a single right, *viz.*, the right to free life. Life without liberty is useless and conversely, it is the use made of life that gives one the right to life. The ethical basis of the right to free life is, therefore, the capacity of the individual for membership in society, *i.e.*, the presence in him of 'the conception of a well being as common to *self* with *others* (*29 : 156*)'.

It is strange that such an elementary right as the right to free life has only been gradually recognised. Early societies did not recognise the right to life of man as man; but only in terms of the family or tribe. Among the influences which brought about the change may be discerned three: Roman Equity, which led to the recognition of rights independent of citizenship in a particular State; the doctrine of a 'law of nature' applicable to all men, popularised by the Stoics; and the Christian conception of a universal brotherhood (*29 : 156*). In spite of great advances, this right is recognised only negatively in modern societies. All we do is to enact that no man shall be used by other men as a means against his will; but we often leave him without the chance of using himself for any social end at all (*29 : 159*).

The bases of the right to free life are the instinct of self-preservation natural to man and the instinctive aversion of the average person to take the life of any sentient being. Of course it is very difficult to build a system of rights merely on the basis of instincts and emotions. Before any right is conceded, society must be convinced that it is necessary for the individual's self-development as well as valuable to itself. Again, if rights rest merely on instinct and emotions,

how are we to explain the readiness with which people kill their own fellowmen in warfare or the ever-present phenomenon of wilful murder ? The right to life, therefore, is not unconditional. Only to the extent to which it is used in the interest of one's self-development and in the interest of society can it be justified.

Implications of the Right to Life:

The right to life implies the duty to live. Neither from the point of view of himself nor from that of society is an individual justified in taking his life. Hence it is that attempt at suicide is punishable in all States. From the point of view of the individual, no one knows at any time that he has become all that he is capable of becoming. So long as there is life, there is hope. History furnishes many instances of persons in whom the mental power has continued to grow even after the body has begun to decay. In other cases, even if the mental powers do not grow, one's plans and thoughts continue to develop almost indefinitely. Therefore, at least in a majority of cases, one does not know when one has ceased to grow. Most cases of suicide are a retreat from the realities of life and an expression of cowardice. Modern thought rightly refuses to countenance suicide, except, perhaps, in the case of incurable disease.

1. The Duty to Live

Suicide stands condemned from the side of society also. As Gilchrist remarks, every life is valuable from the point of view of general welfare. Therefore, to take away one's own life or that of another is to eliminate 'an individuality which has rights as well as duties'. In the language of St. Thomas Aquinas, suicide is an offence to oneself, an offence to the community, as well as an offence to God himself. At the most, suicide can be excused; it cannot be approved.

If one has the right to life, it is one's duty to refrain from taking the lives of others. Murder is not only a moral wrong, but also a serious legal offence. Is capital punishment a violation of the right to life of the murderer ? Strictly speaking such a person has no right to life at all. He has forfeited his right by the 'unassociable will' which he clearly demonstrates. Therefore, the only right which he may claim is the 'reversionary right' of being restored to society as a normal member capable of making an individual contribution to the general good.

2. The Duty Not to Commit Murder

Those who are opposed to capital punishment argue that not

infrequently a wrong man is sentenced to death and that most cases of murder are committed under extreme provocation or in a fit of insanity. They further argue (*a*) that death penalty has had a bad effect upon society in tending to cheapen human life and makes people callous to human suffering; (*b*) that it is a relic of the barbarous times when vindictiveness characterised the dealings of men; (*c*) that many a murderer is an irresponsible person and does not realise the gravity of his crime; and (*d*) that death penalty has not acted as a sufficient deterrent. The conclusion which they draw from all this is that society should cure or restrain the criminal. not hang him.

In evaluating these arguments, it must be said that they are based on a false sentiment for life as mere physical existence. Society is not obliged to maintain the life of a member in society if he deliberately injures the lives of other members. A man who murders another for the sake of his property obviously forfeits his right to life. He is worse than a beast of prey and, therefore, to defend him is sentimentalism of a perverted sort. The religious argument that at no time is a man fit to die and that capital punishment deprives a murderer of the chance of repentance, is irrelevant. The truth is the man is not fit to live.

An argument which is frequently used is that the murderer could not have been in his right mind when the murder was committed. The important point to bear in mind here is the necessity of establishing a man's insanity apart from his act of murder if we are to be lenient with him. What often happens is that when every other plea fails, recourse is had to the plea of insanity. Want of motive may of course be a ground for arguing that the individual concerned did not commit the crime, but it is not a ground for being lenient with him. If there is no motive for the murder, it makes the crime all the worse. If we allow a man of this kind to go scotfree, the result may be that the more barbarous the crime is, the more a man can escape on the plea of insanity. If a murderer's insanity is of a temporary kind, there is ground for being lenient with him, treating him as a potential person, like a child who is capable of becoming a normal person. But if he is incurably insane, he becomes a dangerous animal and, therefore, it is better to allow the ordinary law to operate.

Sir Herbert Stephen opines that capital punishment gratifies, as no amount of imprisonment can, the natural and healthy resentment of the relations and friends of the murdered man, and that it is an

effective check on murder. It is his opinion that a good many murders are committed after methodical calculation. If allowed to have his way he would slightly extend the present law so as to include despicable acts of villainy under crimes punishable with death.

The conclusion to which we are led is that in clear cases of murder, death penalty is justifiable, at least at the present stage of human development. We should take special care, however, to see that capital punishment is as rigidly restricted as possible. To award death penalty to lesser crimes is thoroughly wrong, for the fact that lesser crimes are not punished with death presents a strong motive to the lesser criminal not to risk capital punishment if he can avoid it.

While we believe in capital punishment in a limited number of cases, we favour at the same time an increasing use of indeterminate sentences. The substitution of life imprisonment for capital punishment is no improvement in the case of a cultured and sensitive individual, for 'one as much as the other is an absolute deprivation of free social life, and of the possibilities of moral development which that life affords (*29*). Therefore, the only justification for a sentence of perpetual imprisonment is the possibility that the prisoner may be released after a time on showing amendment of character.

3. The Right to Self-defence

It is generally assumed that the right to preserve life includes the right to defend life. As to whether in a given case the force used in the defence of oneself was justified or not is left for the law courts to decide. The prevailing belief is that self-defence is justifiable, but not aggression. The difficulty with this view is that it is not always easy to define such terms as 'self-defence' and 'aggression'. To prove whether the one or the other is justifiable 'we must know *what* is being defended and on *what* aggression is being made (*66 : 120*).'

A question which arises at this point is in reference to war. Is the State justified in calling upon the individual citizen to lay down his life on the battlefield ? Is this not an interference with his 'right to life' ? Most wars, as noted by Green, have arisen from despotic ambition or national vanity and from a desire of economic gain. Therefore, to speak of an inevitable conflict between States is an absurdity. 'It is not because states exist, but because they do not fulfill their functions as states in maintaining and harmonising general rights, that such conflicts are necessary (*29 : XIX*).'

Hegel takes a different view. 'The state of war shows the omnipotence of the state in its individuality.' This belief in the divinity of

the nation convicts of nullity the independence of individuals. The only things which matter are country and fatherland.

Bosanquet approaches the ethics of war from the standpoint of the 'rights of the state' and has little hesitation in justifying war. He believes in the personality of the State and its moral responsibility. When the claims of mere life, he writes, collide with the claims of better life, 'every being and agency that is truly human, individual or collective, knows what it has to do'—go to war! The State is to Bosanquet 'the guardian of moral interests, and must be faithful to its duty (*5 : 2*)', even if it means the injuring of some individuals.

Suffice to say that all this is least convincing. Modern warfare involves rapid and often secret action. It is normally accompanied by cruelty, fraud, and treachery. It is an economic drain and involves waste of life and thought. It is an incentive to individuals and groups of individuals to use force for the gaining of private ends. Modern warfare in particular, with its weapons of colossal destruction, is morally indefensible, economically inexpedient, and politically suicidal. In the light of all this, we have no hesitation in concluding with Burns: 'Democracy and war are irreconcilable, and therefore, the ideal of democracy must provide an alternative to war as an institution (*10 : 29*).'

4. The Right to Reproduce Life Coupled with the Right to be Born Without Heavy Handicaps

A primary instinct of man which is to be placed alongside of the instinct of self-preservation is the instinct of sex. From this it would appear that the right to reproduce life was almost a 'natural' right. Yet it is not a right which can be claimed absolutely. In modern society, it is not unreasonable to demand that in the interest of society in general and of the offspring in particular, such people as hereditary and incurable lunatics, idiots and imbeciles, hereditary deafmutes, lepers, etc., should be prohibited from marrying and prevented from propagating their kind.

In close connection with the right to reproduce life we may discuss a right which is not yet asserted to any great extent, but which, in some form or other, will have to be included in the organisation of progressive societies—the right to be born without undue handicaps. The fact that children do not have a voice in the choosing of their parents places a grave responsibility upon parents and society to see to it that no child comes into the world which is unable by virtue of its birth to take its proper place in the common life of society.

Children have a right to start life on fair terms. This means that, among other things, we should encourage those at the top of the eugenic ladder to breed fast and discourage those at the bottom from breeding at all, Mother's pensions, widows' aids, gratuities to parents who bring into existence a large number of eugenically desirable children, State aid for the education of such children, legal fixation of the age of marriage, the requiring of health certificates for the begetting of children, are all means to the end that we have in view. In line with these suggestions, Professor Lorimer says : 'A man who cannot bestow a human education on his children has no more natural right to marry than a man who cannot beget them (*66 : 128*).'

A question of some practical importance at this point is, Do hopeless idiots, imbeciles, and incurable lunatics have a right to free life ? Should their lives be preserved even if there be no possibility of a self-conscious existence ? Green argues that since life is continuous and development is possible in some future existence, such people should be kept alive. This argument is irrelevant inasmuch as we are concerned with growth here and now and not with growth in some future existence. While we are willing to concede to Green that in many cases of insanity and possibly feeble-mindedness, it is not easy to draw a line between what is curable and what is not curable, we cannot support his argument that such people should be kept alive and well looked after just because ministration to their needs calls out the finer elements of human nature. This is a wrong kind of sentimentalism. Nevertheless, we believe that we should keep intact the instinct of repugnance to the wanton taking of life. Reasons of humanity require it. At the same time, in the interests of posterity, it is necessary that hereditary defectives, hopelessly diseased persons, and congenital criminals of the worst type should be segregated from the rest of the community and, wherever necessary, sterilised against the possibility of breeding their kind. Where population is increasing by leaps and bounds as in India, the State is justified in penalising those who breed fast without any thought of providing for their progeny.

5. The Right to Maintenance and the Right to Work

A right which is coming to be asserted more and more in the modern world is the right to work. It is claimed that a corollary of the right to life is the right to have life upheld when the individual is unable to do so by his own effort. It needs no argument to show that every individual requires a certain amount of the material

goods of life to be able to play his part in society Without such substance, man will soon sink to the level of the brute creation. The socialists claim that the labourer has the right to work and that, when he is thrown out of work, he must be fully supported by society. Is this claim justifiable ?

It is obvious that society should not allow any of its members to starve. With all the scientific discoveries and inventions that man has made and with the growing social consciousness among thoughtful men, it should be possible to banish starvation from the face of the earth. This will mean, among other things, a minimum wage law, a radical redistribution of property among the members of society through such means as social security, severe restrictions on bequest and inheritance, discouragement of the idle rich, and prohibition of waste and display.

So far as poverty and unemployment are the fault of society, it is the business of society to organise itself in ways more congenial to the well-being of its citizens. For, as Laski says : 'Either the state must control industrial power in the interest of its citizens or industrial power will control the state in the interests of its possessors *(47 : 109)*.' Poverty and unemployment due to the idleness or inefficiency of the worker should be treated differently from poverty and unemployment caused by society.

The old *laissez faire* theory in the economic field is fast becoming a dead letter. To use the phraseology of Laski, we need to substitute for the eighteenth century police State the twentieth century social service State. The State should more and more undertake the duty of finding employment for the able-bodied who are eager to work but cannot find it, and make provisions of other kinds for the aged and infirm who are unable to work. If the State is to find employment for its dependent members, it follows that they should be prepared to do whatever work the State can provide. Laski writes : 'A prime-minister who has been overthrown has not the right to be provided with labour of an identical character. Society cannot afford each man the choice of the effort he will make....It needs a supply of goods and service to maintain its life. The right to work can mean no more than the right to be occupied in producing some share of those goods and services *(47 : 106)*.'

When the individual is thrown out of employment and no work can be found for him for the time being, it is the duty of the State to provide him a maintenance. Every well-ordered State should have a

system of unemployment benefit to which the working people themselves make some contribution. In Laski's judgment, 'the principle of insurance against unemployment is integral to the conception of the state (*47:106*).' 'To be his best self a man must work, and...the absence of work must mean provision until employment again offers the opportunity of work (*47:106*).' But a bonus or allowance to which the individual himself has not contributed a certain share does not commend itself to us. It is bound to increase pauperism and demoralise the working classes.

'A man has not only the right to work. He has the right also to be paid an adequate wage for his labour (*47 :107*)', *i.e.*, a wage necessary for 'creative citizenship.' All men need food, clothing and shelter, a certain amount of leisure, and opportunity for education and culture, and for the development of the best that is in them; and no man should be allowed to fall below this standard. 'The right to an adequate wage', says Laski, 'does not imply equality of income ; but it does...imply that there must be a sufficiency for all before there is a superfluity for some (*47:109*).' The first need of the masses is therefore, 'to realise the right to adequate payment for their effort (*55:135*).'

B. The Right of Liberty

1. Meaning of Liberty:

The ideal of liberty has made its powerful appeal to man in all ages; and in the name of liberty have been performed great acts of heroism as well as despicable acts of crime. Even to-day there are very few ideals which can move men more readily than the ideal of liberty. Liberty is the essential quality of human life.

From what has been said earlier, it is obvious that there can be no absolute freedom anywhere in society. The only 'absolute' right of any normal human being is the right to the full and free development of his personality. The right of liberty is relative to this end. No man has the right to pursue his inclinations irrespective of consequences.

Freedom in the negative sense means the mere absence of restraint. But it does not say whether such freedom is good or bad. What is wanted is positive freedom which may be defined as the positive opportunity for self-development or for the continuous expression of one's personality. 'It implies', says Laski, 'the power to expand, the choice by the individual of his own way of life without

imposed prohibitions from without (*49: 11*).' It is the condition and guarantee for self-determination of action.

The word 'liberty' is rich in connotation and suggests new ideas at every turn. In olden times, as J. S. Mill (*61*) points out, liberty meant protection against the tyranny of political rulers. The rulers, however essential their presence was for the continuance of the body politic, were regarded as holding interests antagonistic to those of the people, and so the limitation of monarchical power was what was meant by the liberty of the people. This limitation took the form of winning recognition for certain immunities and political liberties and the estal lishing of constitutional checks. In course of time, it was found that it would be better to have representatives or delegates of the people as magistrates of the State. Even this proving inadequate, the further step was taken of identifying the rulers with the people, and making their interests and will coincide with those of the people. Thus the power of the State became the power of the nation, concentrated in a form convenient for exercise. In short, 'liberty' came to mean the popularising of government.

But liberty soon proved a mirage, and there came to be the anomaly of a 'tyranny of the majority'—a tyranny of the prevailing opinion and feeling. This tyranny was found to be more thorough-going and even more deadly than the tyranny of the individual ruler. And in its attempt to come once again to the forefront was born a new form of liberty, individual or personal liberty. It is to this form of liberty that Mill gives his chief attention in his celebrated essay on Liberty, his aim being to safeguard the individual, even his eccentricities and oddities, against the attacks of society.

2. Types of Liberty :

1. Natural Liberty

The conception of 'natural liberty' is a euphemism for the freedom of the jungle. Those who uphold 'natural liberty' argue that man is by nature free and that civilisation is responsible for his increasing bondage. They quote with approval the words of Rousseau, 'Man is born free ; and everywhere he is in chains', forgetting that Rousseau himself, after weighing the arguments for and against the state of nature and the civil state, had no hesitation in deciding in favour of the civil state. Man in the state of nature is subject to physical impulses, while in the civil state he becomes a rational creature governed by laws of justice and morality. 'What man loses by the social contract is his

natural liberty and an unlimited right to everything he tries to get and succeeds in getting ; what he gains is civil liberty and the proprietorship of all he possesses (*76 : Bk. I, Ch. VIII*).'* Absolute freedom therefore equals absolute anarchy.

2. Personal Liberty

Every normal human being desires personal freedom. He wants to be able to plan his life in his own way. He values highly the right to exercise his faculties and to determine the general conditions of his life. He does not relish undue restrictions on his freedom to go about his business the way that he thinks best. Interference with his particular mode of living, tastes, and pursuits are particularly resented, especially when these personal preferences are not contrary to the social order or public morality. In the U. S. A. prohibition of liquor by state legislation was keenly opposed by many a law-abiding citizen because it was construed to be an undue interference with his personal freedom. In England every man regards his house as his castle, inviolable against all outsiders. Even the officers of the State cannot force entrance into it, except as provided by ordinary law.

Mill values the right of personal freedom so greatly that he goes to the extent of saying that the individual should be free to experiment with his life, so long as his actions do not directly and definitely affect others. Mill is even prepared to allow people to experiment in extravagance, viciousness, and drunkenness, subject to consequences.

Like Mill, Bertrand Russell attaches much importance to personal freedom, which he regards as the greatest of all political goods. Thinkers who adopt this point of view value their personal freedom much more than any political rights, for, they say freedom of thought, freedom of speech and expression, and the like are much more essential to a person's real development than the privilege of voting or holding an office. It is this view of personal liberty which underlies much of the thought of philosophic anarchism. In the trenchant

* Rousseau: *Social Contract*. Book. I, Ch. VIII. A. J. Carlyle (*Political Liberty*. pp. 182 ff) claims that the first important contribution of Rousseau was 'his emphatic assertion of the long tradition of the Stoics and the Christian Fathers that men in their primitive condition lived in a happy and innocent anarchy'. Instead of lamenting the passage from the state of nature to civil society, Rousseau thinks political subjection legitimate because in Carlyle's words, 'man to be man must live under the rational and intelligible authority of his fellow-men in the great community of the State'.

language of Rousseau, 'To renounce liberty is to renounce being a man, to surrender the rights of humanity and even its duties.' Slavery is universally condemned to-day because it robs human life of all its meaning and makes man 'an animated tool'.

3. National Liberty

Although the conception of nationality is comparatively recent in its origin and development, from very remote times men have been prepared to lay down their lives for the safety and security of their group. The love of one's country is deep-seated in man, and patriotism, even in the narrow form, evokes feelings which cannot be easily awakened by other ideals. Thus it is that liberty in the sense of national independence has played a very conspicuous part in world history. Wars of independence are still applauded by the bulk of mankind in spite of the fact that there is a growing revulsion of feeling against war as a means of settling international disputes. So long as we are governed by the conception of sovereign nation-states and so long as internationalism is a little more than a pious hope, freedom from the control of other states is essential to the conception of liberty in its fullest sense.

4. Constitutional Liberty

Freedom in the twentieth century means not only self-government but also popular government. The term 'National Independence' is beginning to be used more and more as a synonym for democracy or popular government. There is little disposition to substitute for the arbitrary rule of the foreigner : an arbitrary rule exercised by one's own countrymen. Thus liberty, in one of its essential forms, stands for a government chosen by and responsible to, the general body of the people : and this we call 'constitutional liberty'. Laski remarks : 'A Bill of Rights, so to say, canonises the safeguards of freedom, and, thereby it persuades men to worship at the altar who might not otherwise note its existence (*49 : 52-53*).'

5. Civil Liberty

This may be defined simply as liberty in society. 'It includes liberty to free action and immunity from interference (*24 : 111*).' 'It consists of the rights and privileges that the State creates and enforces, such as :

(*a*) freedom of the person ;
(*b*) equality before the law ;
(*c*) security of private property ;
(*d*) freedom of opinion and of its expression ; and
(*e*) freedom of conscience.'

It is, in brief, a safeguard against physical and moral coercion

whether it be from the side of the individual or of the Government. It includes personal freedom.

6. Political Liberty

As contrasted with civil liberty, political liberty stands for the share that the individual has in the management of the State ; or, at least in the direction of the manner in which the power of the State shall be exercised. As Laski puts it, it stands for the right to be active in the affairs of the State. In particular, it implies such rights as the right of franchise and the right to stand for public offices.

7. Economic Liberty

Even after attaining all the foregoing types of freedom, a person may not be much better off than a slave so long as he has no control over the economic conditions governing his life. In recent years much has been written and more has been said on the virtual slavery of the toiling masses. What is uppermost in their minds when they contemplate their lot in life is not political nor civil nor constitutional liberty. It is an economic and individual freedom, a freedom which will ensure to the labourer a just reward for his labour. It is a freedom which will destroy all cut-throat competition and blind-alley jobs and remove such artificial regulations of manufacture and trade as result in the demoralising of the worker. It is a freedom that will help to create that harmonious industrial system where every man will produce only that which he is best capable of producing and the community will have need for what he produces. And unless and until this freedom is achieved, it cannot be said that we have solved the problem of liberty in its fulness. Economic liberty implies, says Tawney, the absence of such economic inequalities as can be used as a means of economic constraint. To Laski, it implies democracy in industry *(40 : 72)*.*

* C. E. M. Joad in his *Liberty To-day* calls attention to the valuable truth that in our eagerness for economic justice we should not sacrifice political liberty, as some socialists are apt to do. He concedes that political liberty is valueless without economic security but holds at the same time that 'political liberty is a good in and for itself'. He argues that 'the fact that economic security is a good should not cause us to forget that political liberty is also a good or wilfully to jettison the latter in our natural disappointment at having failed to secure the former'. (p. 72). The numerous restraints placed on the personal liberty of the individual in totalitarian states would only serve to show how cherished political liberty becomes for an individual: and it is through these political rights, through their rights of combination to form Trade Unions and to vote in secret that the working class has been able to wring concession after concession.

A person may have all the kinds of freedom considered above. Yet if he does not have moral freedom, he is among the most deplorable of men. A moral slave is one who habitually wills and acts against his universal or rational self. If I see the universal-I in everybody, if I am moved by a supreme disinterested reason, and if I have sincere respect for the personality of every individual, my moral freedom is indeed complete. But if on the contrary, I continually dwarf my personality by refusing the claims of the universal-I and pay no attention to what Kant calls 'the autonomy of the rational will', I am unfree in the most essential part of my nature. Moral freedom is the stone which builders like Machiavelli have rejected, but which must become the head of the corner. Without it social and political freedom is of little value. T. H. Green and Bosanquet pay much attention to it. To Hegel in particular and to the idealists in general, freedom interpreted in this manner is objectively realised in the State.

8. Moral Liberty

3. Liberty and Authority:

Our natural impulse is to regard liberty and authority as mutually exclusive of one another. The eighteenth century individualism gave expression to this impulse by regarding every action of the State as an infringement upon individual freedom. This is a profoundly mistaken view. Experience clearly shows that authority in some form or another is necessary to the maintenance of liberty. As Willoughby puts it, freedom exists only because there is restraint. The only liberty possible for civilised man is a defined and limited liberty. To leave each man to do what he pleases means anarchy and return to the 'State of nature'. The Protestant Reformation set aside the infallibility of the Pope only to substitute for it the infallibility of the Bible. What history shows is that men free themselves from one kind of authority and put themselves under another.

Far from liberty and authority contradicting one another they supplement and complement each other. Locke discovered long ago that 'where there is no law there is no freedom.' Hocking goes so far as to say that the greater the liberty a person desires, the greater is the authority to which he should submit himself. If a man wants to become a musician, he must first master the technique of music; likewise, if he wants to communicate his thoughts to others he must know some language and the rules of grammar governing it. Only after this does he become free. Laski is right when he says that

certain restraints upon freedom add to a man's happiness.

As Hocking points out, liberty for most of us consists in specialisation, and specialisation means authority. On the whole, there is no liberty without bondage. Authority is the bondage of the mind to a superior mind. The man who is a specialist in his field is our authority. Freedom for many of us lies in liberty to concentrate on the things that we can do best. One has to buy one's freedom at a price and that price is submission to authority in those spheres in which one does not aspire to become a specialist. Specialisation, therefore, calls for delegation of freedom. Thus, it turns out that liberty and authority are closely related to each other instead of being opposed to one another.

What we have said about authority in general applies with equal force to the relation of man to the State. The State is a servant to do our will, and to the extent to which it carries out our will faithfully, we are free and have positive political liberty.

Liberty and Law

The close relation between liberty and authority in the political field is expressed by the statement that sovereignty, far from being opposed to liberty, is essential to it. Without law there is no true freedom. As Ritchie remarks: 'Liberty in the sense of positive opportunity for self-development is the creation of law and not something that could exist apart from the action of the State (*66: 139-140*).' Certain restraints are necessary in the interest of general well-being. But they should be applied impartially, and society should be convinced of their reasonableness. Otherwise, liberty and authority remain opposed to each other. So long as one has the feeling that law is an external compulsion devised for the benefit of some particular person or class, there is bound to be profound discontent and unhappiness, leading at times to rebellion. Therefore, if liberty is to be reconciled with authority, the authority which we are called upon to obey should be reasonable, and obedience to that authority should be voluntary. To quote Rousseau, 'Obedience to a law which we prescribe to ourselves is liberty(*67 : 19*).' Green says that man is free when he obeys the law of which he is the author and obeys it from the impulse for self-perfection. Laski expresses much the same opinion when he observes: 'Law is not merely a command ; it is also an appeal (*49 : 71*).'

All this does not mean that a voluntary and literal consent of all citizens is essential to every law before it can be rightly enforced. The individual has no intrinsic right to disobey every law of whose worth he is not personally convinced. To concede such a right will lead to

general anarchy. The political theory of Herbert Spencer shows the unworkability of the principle of literal consent, because obviously we cannot secure unanimous consent on all matters. Literal consent means the coercion of the minority by the majority, and for such coercion there is no justification from the point of view of any sound political theory. Realising the impracticability of literal consent, some writers base political obedience on force, and others, like Mill, devise a compromise. Political obligation and self-government, as pointed out by Bosanquet, will remain a paradox till we bring to our aid the principle of active consent which is another name for general will. All that this principle demands is the development of the consciousness that the State has a high moral purpose to fulfil and that its will is the will of the individual himself purged and purified of its selfishness. So long as the actions of the State are in the interest of the common good, the disobedient individual can be 'forced to be free', for even when he is being compelled, he is constrained in his own true interest.

A. Liberty and Equality:

Such ardent lovers of freedom as De Tocqueville and Lord Acton hold the view that Liberty and Equality are opposed to each other. This seems to be a mistaken view. The French revolutionists were neither mad nor stupid when they made their war cry 'Liberty, Equality, and Fraternity'. All these terms are logically related. If liberty is to move to its appointed end, it is necessary that it should be accompanied by equality in some form. In saying so, we do not mean that society should provide a dead, mechanical level for everybody. Nature has not endowed all men alike. Equality does not mean identity of treatment, reward or functions. It means impartiality or proportionality, *i.e.*, equality among equals and inequality among unequals. It means that, other things being equal, my good is of the same intrinsic value as the good of any body else (***Rashdall***). If this end is to be reached there must be a complete absence of special privileges for person or group of persons ; an equal protection of law against the abuse of power ; an equal guarantee that power shall be used, not for personal ends, but for general advantage ; and provision of adequate opportunities for all.

The last-mentioned condition is by far the most important. There is a tremendous wastage of talent to-day, and in the ideal society talent must not be allowed to 'perish for want of encouragement (***47 : 154***).'

Opportunity should be given to everyone to realise the implications of his personality. Inequalities there may be, but only after a minimum basis of civilisation has been assured to everybody. There may be varying rates of payment for effort. Still, great inequalities of wealth make the attainment of freedom impossible.

All this implies that deliberate social restraints be placed upon individual freedom. Bentham's maxim, 'Each to count for one and no one for more than one', is fairly widely observed in political relations. Experience shows that Political Equality is valueless unless it is accompanied by virtual Economic Equality. Prof. Pollard puts the truth in a nutshell: 'There is only one solution of the problem of Liberty. It lies in Equality.' 'The liberty of the weak depends upon the restraint of the strong; that of the poor upon the restraint of the rich.... Every man should have this liberty and no more, to do unto others as he would that they should do unto him; upon that common foundation rest Liberty, Equality, and Morality *(76: 247-8)*.'

5. State Regulation of Liberty:

We have said repeatedly that there is no such thing as unrestricted liberty, for unrestricted liberty for some will lead to denial of liberty for others. From this it follows that in the interest of the individual himself as well as of society, certain restraints on liberty are essential. To an examination of these restraints as exercised directly by the State, and indirectly by society, we shall now turn. A general principle which can help us in judging the rightness or wrongness of such restraints is the principle that governmental coercion is justifiable if it prevents worse coercion by private individuals.

1. The Right of Personal Security

This is the most elementary condition of personal liberty. No one has a right to assault me or to use my body as it pleases him or to restrain me from moving about as I please. I have a right to motion and locomotion so long as I do not interfere with the similar rights of others or seriously disturb the social order. All this is recognised by the modern State. Aggressions, however trifling, are taken account of by the law. A hostile push can be construed as an assault. The law protects us against menaces of violence—*e.g.*, the angry shaking of one's fist as well as against threats of future violence. It likewise recognises the right of self-defence. When a person is in reasonable fear of his life, the law allows him to use as much force as is necessary for his defence, even to the extent of killing his assaulter.

The law further protects the individual against other people's negligence.

Aggression on the personal liberty of the individual may come not only from other individuals, but also from the government. All civilised States particularly provide against this latter form of aggression. In England, the right of personal freedom means that no one may be imprisoned, arrested or coerced except in accordance with the ordinary law of the land. This right is safeguarded by (1) redress for wrongful arrest; (2) the Habeas Corpus Acts; and (3) the Rule of Law in general.

(1) Redress for arrest means that a person who has been wrongly arrested can either have the wrong-doer punished, or exact damages in proportion to his injuries. Such action may be taken against any person in the realm, official or non-official.

(2) A Habeas Corpus writ demands that a man who is kept under restraint should be produced before the open court for proper trial. This is a very great check on the arbitrary action of the executive government. It makes it incumbent upon the police and the executive to act in accordance with the law of the land.

(3) The rule of the law, in normal times,
  (*a*) subjects all persons in the State, including officials, to the ordinary civil courts,
  (*b*) opposes prerogative or the discretionary authority of the government, and
  (*c*) deduces constitutional liberties, such as the liberties of speech, writing, and of public meeting from the ordinary private law relating to private persons.

In as ense, everyone has the liberty of thought, and nobody can restrain it. A person may shut himself up in his room and say or wish to himself anything that he likes. Nobody is affected by it so long as no attempt is made to communicate it to others or to translate it into practice. But this is not the ordinary interpretation of freedom of thought. If liberty of thought is to have meaning, it is necessary that to some extent it be accompanied by liberty of speech and action. To think what one pleases and not be free to express it in speech and action is oppression. It 'becomes a torture which eats away the soul (*66 : 168*).'

2. Liberty of Thought, Speech and Writing

Freedom of thought and discussion has been valued as a sacred possession of man from very early days. Socrates preferred death to restrictions on his freedom to speak his mind. He took the position that the established order should, to some extent, be threatened by the advocacy of new ideas. In England the case of freedom of thought and discussion has been stated in immortal language by Milton, Sidney, Locke and J. S. Mill. Milton held that liberty of thought and speech was the very foundation of all other liberties. Mill justified the fullest liberty of thought, speech, and writing in the form of a sorites. He believed that liberty of thought should have for its corollary liberty of speech and that liberty of speech should have for its corollary liberty of writing. His well-known argument is that the received opinion may be altogether true or altogether false or, what is more likely, partly true and partly false; and that in every one of these cases, there is very strong reason why complete freedom of thought and discussion be permitted. If the received opinion is altogether true, why should one be afraid of giving others a chance to refute it, if they can? To limit freedom in such a case may mean that one is not sure that the received opinion is, after all, true. It is certain that to refuse permission to have one's creed openly discussed is to make it a dogma. If, in the second place, the received opinion is altogether false, it is our privilege and duty to give up our error for the truth that we can get from others, by free discussion. Finally, if the received opinion is partly true and partly false, there is all the more reason why there should be full freedom of thought and discussion in order that each one may learn of the other. To suppress opinion in such cases is to claim infallibility, and experience shows that nobody is infallible.

In setting forth the above argument Mill naively believes that mankind is so reasonable that truth will always meet with warm reception. He overlooks the fact that more often than not people decide not according to reason but according to emotion; and that even in a civilised community one finds a percentage of people incapable of using liberty aright. Like the *laissez faire* theorist of his day, Mill assumes that personal good somehow magically transforms itself into social good. He ignores the common experience that truth at times should pass through intolerance in order to become strong. Anyhow, as a Utilitarian, he has no right to speak of absolute liberty, but should really be guided by considerations of expediency. All this makes it clear that no society can allow unlimited liberty of thought.

Renan gives a high place to liberty of thought, describing it as the great solvent of all fanaticisms. Hocking argues that liberty of thought is essential to the development of the individual in that it makes it possible for him to gain power through ideas. In a healthy society, he holds that all ideas be given a chance to prove their worth.

Nevertheless, it is admitted on all sides that there are limits to the free expression of opinion. These limits are fixed by society through public opinion and by the State through laws relating to libel, slander, defamation, blasphemy, sedition, etc. The general principle followed in restricting freedom of speech is that expression of opinion be within the limits of decency and not be contrary to the social order and public morality.

Libel and Slander. Aggression on the personal liberty of the individual is not merely physical. It may take the form of causing mental suffering. It is obvious that the law cannot protect us against this form of suffering, for both the proof of the suffering and the measurement of it are alike too indefinite for the law to take into account. Nevertheless, the law does protect one's reputation by providing against libel and slander. It recognises the fact that reputation is a sacred possession of the individual and that it exists to a large extent in the minds of other individuals. Therefore, when one individual wrongly accuses another of crime, whether it be serious or slight, or in any way causes damage to his character or conduct in a reckless manner, he is punished for slander. In some countries, even to impute that a person is unfit for his occupation or to question his skill is punishable.

Merely to prove that a statement made against a person is true is not enough. The charge must be made clearly in the public interest, for it is just as possible to persecute a person with a true statement as with a false one.

In awarding damages for libel, it is usual to take into account the intention of the attacker as well as the status and feelings of the person attacked. The present law of libel in English-speaking countries is such that at times even when the suggestions made are true and have a definite public import, the person making them is liable to be punished, everything depending upon the interpretation of the law. But the general rule is, whether a damaging statement is made by a newspaper or by a private individual, there is no punishment so long as the offending statement cannot be brought within the scope of the existing law.

Blasphemy. The general principles which apply to libel and slander apply also to discussion of religious and moral questions. In England, cases coming under the law of blasphemy are tried by the ordinary courts, by a judge and a jury, 'so that the particular amount of immorality or religious danger in an act under judgment will be adjudged largely according to the current ideas of their danger and the public life of the country (*28 : 150*).'

The Right to Criticise Government. While in a sense the State is the creator and guarantor of liberty, liberty always demands a limitation of political authority. To be able to call to account one's rulers is one of the essential safeguards of liberty. In the words of Laski: 'There will never be liberty in any state where there is an excessive concentration of power at the centre (*49 : 65*).' 'Order, surely, is not the supreme good, and rebellion has not always been wrong (*49 : 76*).' But no State can tolerate law-breaking and no individual can be allowed to disturb the stability of the State by inciting people to defy its authority. Acts of violence and disloyalty come under the laws of sedition and treason. When the danger is indirect and remote, statesmanship requires toleration. Laski goes so far as to say that all restrictions upon freedom of expression on the ground that they are seditious or blasphemous are contrary to the well-being of society, for the heresies of today are the orthodoxies of tomorrow. To allow cases of sedition, treason, etc., to be decided by some branch of the executive is sure to lead to abuse. In the forcible words of Laski: 'Executive justice, in fact, is simply a euphemism for the denial of justice (*49 : 111*).' Exceptional times like war may justify serious curtailment of freedom. Laski, however, believes that freedom of speech in war time broadly involves the same rights as freedom of speech in times of peace. In his own words: 'If a man sincerely thinks, like James Russell Lowell, that war is merely an alias for murder, it is his duty to say so even if his pronouncement is inconvenient to the government of the day (*49 : 113*).'

Liberty of the Press. The laws relating to the press in England and France represent two different types altogether. Which of the two systems—the English or the Continental—is superior is a debatable question. According to Lord Mansfield, in England the 'liberty of the press consists in printing without any previous licence, subject to the consequences of law.' There are no special courts for the trial of press offences. Newspapers are under no more special liabilities than private individuals.

In France and the Continental countries in general, however, there are not only special press laws, but also special tribunals for trying press offences. The French theory of government is that government should not only punish those guilty of exceeding the limits of freedom of speech, but that it should also guide public opinion in the proper channels. It is based on the principle that prevention is better than cure.

No such right as the liberty of the press has ever been recognised by law in England. Even though there is no censorship of the press, there are laws relating to sedition, treason, blasphemy and the like, and these laws circumscribe the liberty of the press. Under these limitations it is generally assumed that freedom of discussion is ensured by jury trial. However true this assumption may be as regards the past, it does not have the same validity at present owing to changed conditions. In earlier days the class from which jurymen were drawn had a tendency to give verdicts against the government. But to-day the majority of jurymen are not particularly noted for the love of freedom of thought or discussion. Hence it may be that the system which was once a guarantor of individual liberty may have to be abandoned unless it can be radically transformed.

3. Liberty of Action

Individual Action. Mill's essay on *Liberty* is an eloquent plea not only for liberty of thought and expression, but also for liberty of action. Mill divides conduct into self-regarding and other-regarding conduct. Self-regarding conduct is, according to him, conduct which concerns the individual and the individual alone, while other-regarding conduct is conduct which affects others besides oneself. In the former sphere, Mill argues, there should be no interference of any kind. It is purely a matter of individual preference. In the latter sphere, however, the State may interfere by means of laws and society by means of public opinion, although there are cases in which it is not expedient for either to interfere. In other words, Mill argues for absolute liberty in one sphere and limited authority in the other.

This division of conduct is open to serious criticism. No weapon has been forged which is sharp enough to divide conduct into self-regarding and other-regarding spheres. If there is any truth at all in the organic theory of society, it is that individual good and social good are inter-dependent. Even acts which appear to be altogether personal in their bearing sooner or later touch society at large. According to Mill, extravagance, drunkenness, gambling, etc., are self-

regarding acts, so long as they do not lead to the non-payment of debts, neglect of one's work, or laxity in the performance of one's duties to one's family. However sound such a distinction may be in theory, in practice it is bound to break down in most cases. Even if the distinction were true in some cases, we may well ask the question. Has not the State or society a responsibility towards the individual for his own good or improvement ? Are we justified in abandoning the individual to his own vicious course ? We cannot agree with Mill presuming that every individual knows his interest best. It may be that the individual is the best judge of his present pleasure, but he is not necessarily the best judge of his future pleasure or of the means to such pleesure.

Not withstanding the obvious defects, it must be said that Mill's distinction has a tremendous practical value as a rough and ready rule of action. As far as possible, society should regulate only such conduct as directly and definitely concerns others; but this is not an absolute law. In these days of unlimited bureaucracy and blind worship of the State, Mill's theory needs to be re-stated with all the force that it contains.

Collective Action. The liberty of collective action includes the right of public meeting, the right of association, and the right to boycott, strike and picket.

The Right of Public Meeting. In Belgium there is no interference with indoor meetings, which can be assembled even without permission from the police, but open air meetings come under the police law. The English law recognises no such distinction, and there is no law at all recognising the right of public meeting. The rights of public meeting are derived from the rights of private individuals to go where they please and say what they like, subject to the law of the land. As Dicey puts it : 'No better instance can indeed be found of the way in which in England the constitution is built upon individual rights than our rules as to public assemblies.'

The English view of regarding a multitude as simply a collection of individuals leads to many difficulties. It may be an advantage to incorporate into the English system the continental practice of recognising the public (and often political) aspect of meetings and processions by means of special laws. At the same time, much can be said in favour of the existing system. It provides a safety valve for the pent-up feelings of people and a ready platform for the grievances and aspirations of minorities and saves the police the odium of favouring

one set of opinions as against another. It is generally wise to allow the expression of any kind of opinion so long as a certain decency of language is observed in expressing one's views. Besides, as Ritchie rightly says : 'It is. . .a useful part of the citizen's education to be able to hear the most divergent opinions propounded without a breaking of heads, either by the mutual efforts of the audience or by the guardians of the public peace (*66 : 214*).'

The Right of Association. Like individuals, associations have their rights and duties. No association has a right to wage war against the State or secretly endeavour to overthrow it. Whatever local autonomy associations may possess, the final authority rests with the State. Associations which extend beyond the frontiers of any one State and which command the ready loyalty of its members, in course of time, lead to the undoing of the modern nation-State and to the foundation of an international State. Whatever the future may have in store, it is clear that the modern State should safeguard the liberty of the individual against the ever-increasing authority of associations and should prevent associations from coming into conflict with one another. As far as powerful organisations like the trade unions are concerned, it is the business of the State to be impartial as between unionists and non-unionists.

There are some to-day who argue that the economic life of man is too specialised for the State to undertake its guidance and that, therefore, professional organisations should be so re-formed as to serve as the basis of political representation as well as sources of economic organisation. For the intermittent and remote action of the State, they say, there must be substituted the direct and constant control which the professional groups can supply. Laski argued for a system which would apparently recognise the complex autonomy of such associations with the abandonment by the State of any claim to be the sole compulsory form of association or as the sole representative of general interest. In his words : 'The State is only one among the many forms of human associations, and has no superior claims to the individual's allegiance.' Ernest Barker says : 'The State as a general and embracing scheme of life must necessarily adjust the relations of associations to itself, to other associations and to their own members to itself in order to preserve the individual from the tyranny of the group.' Whatever concessions we may be willing to make to the pluralist, we cannot question the supremacy of the State as a regulating authority.

The Right to Boycott, Picket and Strike. Most modern States allow the practice of boycott within limits. It may be undertaken for social, economic or political reasons. It is primarily an offshoot of the modern industrial civilisation. When boycott is resorted to by an individual or individuals it is not a serious matter ; but when undertaken by an association on a large scale, it calls for social regulation. Ordinarily the State does not interfere with cases of boycott because of the inconvenience involved in 'imposing severe and dangerous restraints on the freedom of industrial intercourse (*72 : 579*)'. In India, however,t here was a curbing of the right of boycott when used as a political weapon against Great Britain.

Most States have no objection to peaceful picketing. Peaceful picketing, however, can shade off into disorderly picketing, and any well-constituted State will seek to draw as careful a distinction as possible between the two. Persuasion is justifiable, but not molestation. It is not always easy to say whether lying down in front of a shop in order to prevent a person from buying articles prohibited by public sentiment is persuasion or molestation.

The right to strike has been recognised only in recent times. It is generally recognised that when all other means of settling the issue have failed, the only effective weapon left is the strike. Sympathetic strikes and the general strike are variously considered. Laski upholds the right to a general strike. He believes that the general strike, is in extreme cases, the only way of rousing the inert public to its responsibility towards the labouring masses. 'A government which meets the threat of a general strike is not entitled to public support merely because it meets the threat (*49 : 133*).'

However justifiable strikes may be in the industrial field, it is widely maintained that civil servants, policemen, postmen, railwaymen and others engaged in public services have no right to strike. Here again Laski holds a different view. 'The civil servant is not merely an employee of government ; he is also a citizen (*49 : 138*).' Therefore, Laski argues that the community is not entitled, on any terms, to put its convenience before the worker's freedom. In order to diminish the number of strikes, Laski proposes that the State regulate the basic wages and basic hours of labour so as to make the conditions of each vocation materially and spiritually adequate, and to confer a large amount of self-government upon each vocation.

This is essentially a modern right. Whatever conflict may have existed in the past between Church and State, present relation is

generally one of friendly recognition not only between Church and State, but also among various religions and sects in the same State. We agree with Rousseau when he says: 'Tolerance should be given to all religious that tolerate others, so long as their dogmas contain nothing contrary to the duties of citizenship (*67 : Bk. IV, Ch. VIII*).'

4. Liberty of Religious Opinion and Practice

Departures from the recognised teachings of the Church are regarded as heresies and the only punishment for them is ecclesiastical. The State does not concern itself with them. When, however, deliberate attempts are made to bring any religion or sect into contempt endangering public order, the law of blasphemy comes into operation. The Church, being a voluntary organisation, is subject to many of the limitations to which other voluntary organisations must submit. It cannot wage war, levy taxes, or imprison individuals. It has no right to incite people to revolution or civil war or to inculcate immoral practices. It has no right, in other words, to act contrary to the duties of citizenship.

At the same time, on account of its special position, the Church enjoys certain privileges denied to other voluntary organisations. It meets a great social need and inculcates morality of a high order. At its best, it cultivates 'a spirit and capacity for idealism which the State's work needs but cannot give' (*A. D. Lindsay*). Such being the useful role played by the Church, it is desirable that it should receive from the State a reasonable amount of protection and encouragement. In most countries special protection from disturbances of various kinds is given to religious meetings. The State allows ministers of religion to perform marriages under its supervision. In some countries it exempts ministers from certain civic duties like serving on a jury and participating in war. In many places buildings used for religious worship are made immune from taxation. Some churches or religious denominations are recognised as established churches and are wholly or largely supported by State money, which is altogether indefensible.

The Right of Conscience. While the right to profess and practise any religious belief within limits of decency and public order is widely recognised, the right of conscience has not yet won such recognition. The difficulties in the way are very many. Conscience is the inner unspoken voice, and no one knows what it says except its possessor. If each one were allowed to follow his own conscience, there would be dis-

ruption of the social order. All consciences do not speak alike. Hence, in political matters there arises the need for a collective body like the State representing the intelligences of the community at large to lay down what is likely to be in the common interest, and what not. The individual can decide for himself in the light of his conscience what is good and what is bad ; and with such freedom no power on earth can interfere. But the State can, and must, interfere with outward actions, inasmuch as they affect the safety and welfare of the people at large.

Most modern States allow conscientious objectors to war to refrain from fighting. This they do on grounds of expediency, and not on the general ground of allowing each citizen freedom to pursue the dictates of his conscience, wherever his conscience may lead him.

5. The 'right' to Resist the State

This 'right' closely follows the right of conscience and in discussing it we shall state the point of view contained in T. H. Green's *Principles of Political Obligation*, Section H. The individual must indeed judge for himself whether a given law is for the common good or not. Even if he judges it not to be, he ought as a general rule to obey it, specially in a country where there is popular government, and where there are legal or constitutional ways of bringing about the desired change without much difficulty. Till bad laws are repealed, the individual should conform to them for that is his social duty. But where there is no legal way of getting bad laws repealed, or where the government of the day is so corrupt that it deliberately prefers private interest to public good, or where it invades the sphere of personality, it may be the duty of the individual to resist. Even in such extreme cases, resistance is not a right but a painful duty.

Before embarking upon resistance, the good citizen, especially if he be a leader, should place before himself the following considerations :

(*a*) Have I exhausted all constitutional methods of bringing about the desired change ?

(*b*) Are the people whom I call upon to resist keenly conscious of a flagrant wrong done to them, or am I simply exciting their passions ? Is the wrong done by government of such a serious nature as to demand resistance ? Do the mass of the people appreciate the grounds on which resistance is to be made ?

(*c*) What about the character and temper of the people with whom I have to deal ? Are they emotional and easily

excitable, or are they reasonable and self-possessed persons who know where to stop ? For once resistance is started, there is no knowing where it will stop.

(*d*) What about my own character ? Have I divested myself of all egotism, and am I actuated by an unselfish desire for common good ?

(*e*) What about the consequences ? Is the second stage likely to be worse than the first ? Will law-breaking lead to a condition of general anarchy ?

Green realises that times of revolution are not the times when questions like these are likely to be impartially considered. Times of revolution are times for action. Besides, in many cases, whether a certain line of action is for the common interest or not, only the sequel can tell. Further repeated attempts and repeated failures may be necessary before a good cause succeeds. A majority has no right to resist simply because it is a majority. It may often be the duty of a helpless minority to resist, even when there are no chances of success.

The practical conclusion to which Green is led as a result of these considerations is that whichever side the individual may decide to take, he is sure to do more good than harm provided his character is sound and his motives are pure and unalloyed. On the whole, the best character is likely to produce the best result, notwithstanding appearances to the contrary.

6. The right of the State to Punish

Redress of grievance in early times rested with the aggrieved individual or the clan to which he belonged. But today it is universally recognised that it is the duty of the State to punish offenders, although it may not be expedient for the State to punish offender. Outwardly, punishment is a limitation of the liberty of the individual.

It has been said repeatedly that the right of the individual to free life depends upon his capacity for membership in society. A criminal displays an anti-social will, and, therefore, society is justified in interfering with his right to free life. In the interest of society, it is necessary that the criminal tendencies in everyone of its members be curbed. To neglect this will lead society back to primitive chaos and anarchy.

On the theoretical side, punishment has been justified from various points of view. Theories of punishment can be grouped under: (1) the retributive theory, (2) the preventive or deterrent theory,

and (3) the reformatory theory.

The first of these has an unfortunate name. It suggests the idea of retaliation or revenge, though historically it is the oldest conception of punishment. Among the ancient Israelites, the recognised practice was 'an eye for an eye, and a tooth for a tooth'.

Two natural perversions of the theory, as brought out by Bosanquet, are : (1) the confusion of punishment with personal vengeance, and (2) the claim that punishment be equivalent to offence. While the feeling of vengeance can be understood in relation to the individual or even in relation to nations, it is inexplicable when applied to the relation between the individual and the State. Green begins his treatment of punishment by disclaiming the association of punishment with the idea of revenge. Mill and Leslie Stephen, however, keep up this association. Stephen speaks of punishment as licensed revenge. Green rebuts this point of view when he argues that it is the essence of punishment to substitute and supersede private revenge. In a state of society where private vengeance is the universal practice, there can be no right at all. Punishment, on the other hand, is an expression of the fact that the criminal has violated a right or rights recognised by society. Punishment, then, is the natural consequence of an anti-social act. The hostile will of the individual stands up and defies a system of rights which the State exists to maintain and which society recognises as being essential to the exercise of capacities for good. Hence the criminal has a 'right' to be punished. A man cannot put his finger into the fire and expect that it be not burned. Similarly, he cannot deliberately disturb the social order of which he is a part and expect that society will not take any action against him. Punishment is the effective means of bringing the criminal to his senses. It may shock him into better life. Punishment is thus the realisation of one's own will. It is the criminal's own will, 'implied in the maintenance of a system to which he is a party, returning upon himself in the form of pain'. It is the correction of one's own 'recalcitrant' will by one's 'real' will.

As regards the second perversion, it must be noted that there is no way by which the State can measure either the pain of punishment or the moral guilt of the crime. Punishment cannot be adapted to factors which cannot be ascertained. As Green notes, even if the State could work out a proportion between the pain of punishment and the moral depravity of the crime, the result would be that the State would have to punish every case differently. That would mean 'an end to all

general rules of punishment (*29 : 191*)'.

The chief merit of this theory is that it fastens attention upon the criminal himself. The deterrent theory, on the other hand, directs punishment against other possible criminals, and this is an inversion of the relation of things. The theory under consideration regards punishment as a measure of social hygiene. Punishment is a display of the power of society in the service of social self-preservation.

The chief defect of this theory is that it can give no reasonable account of forgiveness. As Rashdall points out, resentment and forgiveness alike are applications of the general duty of promoting social welfare and social considerations determine the measure of both. A further defect in this, as well as in the deterrent theory, is that it emphasises social prevention to the exclusion of self-prevention ; but punishment should include both.

The Deterrent Theory. This theory is expounded at great length by Green and Bosanquet. Though a sound view of punishment should include all these elements, retribution, deterrence, and reformation, stress is laid by these writers more on the second than on the other two. According to this theory, the primary aim of punishment is to prevent other possible criminals from committing the same crime. In the words of Green, the object which the State has in punishing 'is not to cause pain to the criminal for the sake of causing it, nor chiefly for the sake of preventing him, individually, but to associate terror with the contemplation of the crime in the minds of others who might be tempted to commit (*29 : 192*)'. The purpose of punishment, in other words, is to provide society with an object lesson. J. Bentham advocated public punishment for the sake of its effect upon spectators. This view of punishment has prevailed for a long time, though it is waning to-day. Even to-day deterrent sentences are passed by judges when they believe that the circumstances of the case demand them. No doubt punishment has the effect of warning prospective criminal against the act which is punished. But that is only a secondary consequence.

We are unable to agree with Green when he claims that the primary aim of punishment is the future prevention of crime by associating terror with it in the popular imagination. If we accept this view, it will mean that the seriousness of a crime is to be measured not by the amount of suffering it causes to society, but by the amount of terror which needs to be associated with it in order to bring about its prevention. It will mean, for instance, that if offences against property

become more common than offences against life, the former class of offence will have to be dealt with more severely than the latter, which is clearly absured. We measure the gravity of the crime by the gravity of the right violated. There is no reason why Green should assume that there would be other criminals similar to the one punished. Deterrence should therefore come in as a secondary qualification and not occupy a pre-eminent place. A practical reason why deterrence should be regarded as a secondary element is to prevent the judge from inclining to undue severity, a probable tendency if he is to use the punishment of one to serve as an example to the many. Even the criminal should be treated as an end in himself, and not as a means to an end.

The Reformatory Theory. This theory has been very prominent in recent discussions. According to it, the primary purpose of punishment is to restore the individual to society by bringing about lasting reform in his character so that he will become a self-respecting and independent member of society. Some of the advocates of this theory regard the criminal as a patient to be cured rather than as an anti-social individual to be punished. The followers of Lombroso claim that crime 'is a pathological phenomenon, a form of insanity, an inherited or acquired degeneracy.' According to this view, 'prisons must be superseded by hospitals, asylums, and reformatories.' Other advocates of this theory blame social conditions for the existence of crime and argue that crime would vanish almost completely if we could have more just social conditions.

To the extent to which the reformation theory is a reaction against the unrelenting and unreasonable spirit of vengeance of an earlier age, it is a sound theory. But, at the same time, it is subject to certain serious limitations. To regard all crimes as pathological phenomena is wide of the mark. Not all criminals are insane or feeble-minded. We distinguish cases of mental insanity from cases of crime proper. A criminally insane person is confined and given treatment, but a normal person is not, except as he requires rehabilitation. He is punished because he is a responsible person, accountable to society for his actions.

There is no doubt that for certain classes of crimes society is more responsible than is the criminal himself. But such are abnormal, and we are not justified in basing a theory on exceptions. Most crimes arise out of an undisciplined will.

Reformation is certainly an important element in punishment but

is not the only element. We agree with Bosanquet when he says that punishment must be deterrent for others as well as reformatory for the offender, and, therefore, in some degree painful. To place all emphasis on reformation is to disregard the interests of society. If reformation were the only sound theory, there would be no justification for the indefinite imprisonment of those criminals who are altogether incorrigible, for punishment in their case is useless.

The most serious criticism is that the theory tends to misinterpret the nature of moral development. No moral regeneration is possible so long as the offending person is not a party to such reformatory process. All true reform comes from within. Green is right when he claims that the justice of punishment depends on whether the social organisation in which a criminal has lived and acted is one that has given him a fair chance of not being a criminal, or in other words on the justice of the general system of rights; on the understanding by the criminal of what rights mean ; and on his recognition that he has violated some understood rights of society. So long as these remain unfulfilled, no incentive from without can accomplish the regeneration of the criminal.

James Seth uses the term 'discipline' to describe the view of punishment which we have adopted, a view which combines into an indissoluble unity the best elements of Retribution, Deterrence, and Reformation. Punishment must be firstly preventive of injustice. It should have no trace of vengeance or vindictiveness. The goal in punishing should be 'to bring home to a man such a sense of guilt as shall work in him a deep repentence for the evil past, a new obedience for the time to come *(71 : 323)*'.

Right of the State in Regard to the Family

Family rights may be considered under the right to 'liberty' or 'property' according to the way in which we interpret the terms liberty and property. These rights are also called household rights. They include the relations (*a*) of husband to wife, (*b*) of parents to children and (*c*) of master to servant.

All rights are personal in that they have for their basis the idea of personality. But the rights of family are personal in a double sense for both the 'subject' and 'object' of these rights are persons. Family rights are reciprocal : they imply a mutual respect for personality.

The family is the basis of our social structure to-day. It is necessary for the good life of the individual. The type of family life differs from country to country, but some features are general. There is an

increasing tendency for the modern State to recognise only permanent monogamous relations, making provision for divorce in very serious cases. The arguments against polygamy, as stated by T. H. Green, are as sound to-day as they were at the time of his writing. Polygamy is a violation of the rights of those men who are excluded from regular marriage and the moral education which results from it; a violation of the rights of the wife who is morally lowered by exclusion from her proper position in the household and is used more or less as the mere instrument of the husband's pleasure; and a violation of the rights of children who lose the chance of that free moral training which depends on the conjoint action of father and mother.

Mere sexual impulse ought never to be the basis of family life. The true basis is the conception of a good which is common to husband, wife, and children. In the interests of the well-being of children, of public morality, and of social solidarity, it is desirable that only monogamous marriages which last through life should be recognised by the State. As a general rule, divorce should be granted only on the grounds of infidelity of either husband or wife. In these cases it should be made as cheap and easy as possible. It may also be granted in cases of permanent lunacy and extreme cruelty. The grounds for allowing divorce for incompatibility of temperament are not clear. In cases of infidelity where the aggrieved party is willing to condone the offence, the law should generally keep its hands off. The moral education of the children demands that the family should not be disrupted except for very serious reasons. The State should not punish infidelity as such. It should leave the aggrieved party to set the law in motion, for the man in whom disloyal passion is neutralised by the fear of punishment is not likely to be a good father or a faithful husband.

As the head of the family, the father has the legal duty and moral obligation to maintain his family in decency. He is no longer the absolute ruler of the family. Children have no legal rights till they reach the age of majority, and till they reach this age, parents are required to support them. The duty of children to support their parents in old age is a moral duty and not a legal obligation. The moral education of children requires that the father and mother act as a single authority, having equal power and status in all household affairs.

C. The Right to Property

The attachment of man to property is so great that many of our

laws relating to property are much fuller, more precise, and more exacting than even laws relating to life and liberty.

Importance of Property

The idea of property lies at the root of the economic, legal, and political sciences. Economics for the most part is concerned with exchange values, involving property. Jurisprudence makes the idea of ownership even more fundamental. Political science considers not only the protection of person but also that of property.

The long history of human civilisation on its material side centres in the idea of property and ownership. From the days when semi-civilised man began to claim possession of his tools, ornaments, and such other personal things to modern times when the thoughts and activities of the average man hinge on such matters as income, dividend, and inheritance, the idea of property has been a supreme factor in the evolution of civilisation. Modern civilisation falls to pieces if we remove from it the institution of property. Individualism, nationalism, and imperialism—all embrace the concept of property.

The Evolution of Property. The instinct of acquisition is common to both animals and human beings. A dog becomes ferocious when anyone tries to deprive it of its bone. Wolves hunt in packs and share the prey among themselves and fight any intruder. Children collect all sorts of objects—birds, eggs, pebbles, bright-coloured rags, etc. Even fully grown people are not free from this instinct, though they may collect more worthy objects such as rare pictures and books. The attachment to private property and the enjoyment derived from it are much more intense than the care for public property and the enjoyment which it gives.

To prove that acquisition is instinctive with man is not a difficult task. What is much more important is to show whether any particular form of acquisition such as private property is more natural than other forms. Hocking argues that all of man's instincts are resolvable into 'the will to power' and when that is satisfied it is not necessary to satisfy every instinct as such. The 'will to power', however, in many cases may and will demand private property within limits.

Hobhouse makes a significant distinction between 'property for use' and 'property for power'. Historically viewed, it would seem that in very early times property was held for use and not for power. It is generally assumed that private property is comparatively recent in origin and that communal property was the universal order in early days. The investigations of Hobhouse, however, lead

him to think that there was private property as regards personal belongings, but no universal rule as regards land. Still, to use the words of Hobhouse, in early society 'land may be communal property, or it may be personal, or the two principles may be intermingled, but in any case it (is) held for use and not for power.'

With the development of agriculture, however, appropriation of land must have become more and more exclusive and permanent. To begin with, ploughing was on a co-operative principle but in course of time the process of individualism led to the division of land into narrow strips for individual owners scattered over a vast area. The history of the evolution of property thus shows that it is not simply the 'creature of the State'. It had its beginnings even before the definite appearance of the State. It is instructive to note that the law of theft is earlier than the State. While, broadly speaking, the State did not create property, it has done much to protect and develop it. So far as the future of property is concerned, Jenks is right in saying that the State should refuse to protect or favour any appropriation without a due return to the community; it should restrain abuses of property and raise the necessary revenues of the State from those best able to contribute to it.

Characteristics of Property. Property may be defined as the control by man over things, or an appropriation of material objects recognised by society. It does not mean mere possession which confers only a delegated right. It calls for exclusive and permanent control over things. As Sidgwick observes, the right of property when used without qualification means 'the complete right of exclusive use, including the right to destroy and the right to alienate, but not necessarily the right of bequest *(72:70)*.' He is right when he says that the right of excluding all others permanently from interference with a particular portion of matter is the most essential element in the right of property.

Like all other rights the right of property requires the recognition of society to make it valid. A right is nothing if it does not have behind it the sanction of society. This is particularly true of property, which is largely the result of co-operative endeavour in our present-day society. The argument that property is a natural right carries with it no conviction any longer. The socialist goes to the other extreme and claims that property is entirely the creation of society. For ourselves, we believe that property has an important social aspect and that the right to property is relative and never absolute. Property

is a form of regulated control and cannot be claimed against the well-being of society.

In modern society property has come to mean power. In one sense it spells freedom, in as much as it is a corollary of the right to free life. In another, it means the restriction of freedom, particularly the freedom of the toiling masses. It confers upon the owner almost unlimited power over the lives and destinies of human beings. Property which strictly meant control over things has come to mean control over persons through things. Hobhouse emphatically asserts that modern economic conditions have virtually abolished property *for use* for the great majority of people and have brought about the accumulation of vast masses of property *for power* in the hands of a relatively narrow class. Considerations of morality and natural justice may be urged in altering the present law of property. But the only way of acquiring property is the legal way based upon such factors as discovery, work ('that with which a man mixes his labour in his'—J. Locke), growth (property begets property), gift or the laws of transfer, exchange, and control.

Theories of Property

1. The Occupation Theory

In very early times when the sense of right and wrong was still undeveloped, the view which based property on first occupation marked a great improvement. In the case of newly-discovered countries such as the United States and Australia, this view certainly had its value. Among political thinkers, it was advanced by some of the social contract writers with reference to private property rights in the state of nature. According to Grotius, man in the state of nature might take for his use what he could and consume what he could but with the rise of 'a more exquisite kind of living, there arose the need of industry with particular individuals might employ on particular things'. The first occupation gave the *right* of possession and use; and consent, tacit or express, transformed it into property. Rousseau prefaces three conditions before possession can become ownership: the land shall never have been occupied; only such a quantity shall be occupied as is necessary for subsistence; and possession shall be established not by an empty ceremony but by labour and cultivation.

However sound the occupation theory may have been in primitive times for providing a rough-and-ready measure of justice, in a settled state of society it is practically useless. As Willoughby observes,

rights in a completely non-social and non-civil state are an impossibility. Further, the theory 'renders it absolutely impossible, except in the rarest cases, to ascertain the rightfulness of any proprietary rights whatever (*82*: *82*).'

2. The Legal Theory

According to this theory, 'the civil law is able to furnish not only the legal, but the ethical basis for the institution of private property (*82*:*83*)'. Quoting approvingly from Cicero, Hobbes writes : 'Take away the civil law, and no man knows what is his own, and what another man's'. His argument is : private property is a part of the political order; maintenance of this order is essential to human happiness, it is man's ethical duty to seek his own happiness ; therefore he should accept the law of property along with the other laws of the State as binding upon him both morally and legally.

Like Hobbes, Bentham takes the legal view of property. But he admits at the same time the ethical justification of disobeying legal commands. As a Utilitarian, he recognises the general beneficence of the laws which secure men in the possession of their property. 'Property and law', he writes 'are born together. Before laws were made there was no pro perty ; take away laws and property ceases'. Rousseau adopts the general view 'that it is only as an institution made secure by the protection of the political authority that the foundation of property is to be found in law (*82*:*90*).'

In evaluating this theory of property, it must be said that while law confers upon property-owners a secure sense of possession, it does not afford any clue as to the ultimate justification of property. Law is not our final standard. It protects only those who have property, and the propertyless are practically excluded from acquiring any wealth. As Rousseau observes, under bad governments law 'serves only to maintain the poor in misery and the rich in his usurpation'. Or, as Willoughby notes, property-owners have not done, or been compelled to do, all that they should have done for the benefit of the social whole.

3. The Labour Theory

John Locke in the seventeenth century advanced what has come to be known as the Labour Theory of property, according to which : that with which a man mixes his labour is his. This right is limited by two considerations, that there should be 'enough and as good left in common for others', and that a man's right to the fruits of his labour is determined by his power to use. As regards the first, Locke himself

realised that there was not 'enough and as good' for others anywhere in the world except in the Americans of his day. The second consideration Locke intended to serve as a basis of extreme individualism. But Karl Marx made it the basis of extreme socialism, advancing the astounding claim that 'the labourer has a right to the whole produce of his labour'. Both Marx and Locke forget that material goods with which a man can 'mix his labour' do not lie about unclaimed in the modern world. Nevertheless, the labour theory contains certain valuable elements: every man has a right to the opportunity of labour; he has a right to the fruits of his labour; and from the point of view of commonsense and morality, no one has a right to anything more than what he can use in the best interests of himself and of society at large.

While conceding these elements of value, it must be said at the same time that labour does not create all value. The social order is just as important for the peaceful production and disposal of property as labour itself. Most labour is social labour. Socialist advocates assume that labour alone is the standard of distributive justice. This is not correct, for no man has a complete right to himself. The labour theory makes no distinction between what we inherit and what is due to industry and faithfulness. It leaves out of account those who are handicapped in the struggle for existence through no fault of their own. As Mill puts it: 'It is giving to those who have—assigning to those who are already most favoured by nature.'

Even if the labour theory is modified to the extent that labour is not the sole producer of wealth, but that it should be rewarded in strict proportion to the part played in the creation of wealth, the practical difficulties involved in measurement are so many and varied that the theory becomes useless.

4. The Individualistic Theory

The extreme individualistic position that each man should be left free to acquire all that he can in the open market and do what he pleases with that acquisition does not accord with the idea of social control which is gaining ascendency everywhere nor with the organic conception of society. The law of supply and demand would no doubt furnish a true index to income if there were an equal opportunity for everybody, but it is a patent fact that there is little of such opportunity in modern society. We admit that in all ordinary cases there seems to be no other practical way of rewarding a man than that of letting him gain what he can in a fair and open market. But

the conditions of such competition do not prevail in the modern world. In the words of Laski : 'The higgling of the market is the apotheosis of inequality (*47 : 191*).' The bargaining capacity of the labourer not being the same as that of the capitalist, the labourer often loses out in the economic race. This means, as Laski notes, poor health, undeveloped intelligence, miserable homes, and work in which the majority can find no source of human interest. To pay according to marginal worth is bourgeois justice. The communist slogan is that each be paid according to his needs. Regarding the social control of property, Laski believes that a state which holds the lives of its citizens at its disposal is entitled in a far higher degree to hold their property at its disposal also. In other words, if conscription of men for war is justified, why not conscription of property for the sake of social justice ?

5. The Socialistic Theory

Socialism in general is not opposed to private property but is opposed to private capital. Unlike communism, it believes in rewarding the labourer in proportion to the *value* of his labour, and here it is in agreement with the individualistic theories of distribution. To Marx and his followers, labour alone has worth since labour alone, according to them, produces wealth. But socialists who differ from Marx understand the term 'worth' or 'desert' to mean 'socially useful labour' as determined by Government officials, while to individualists the same term means result or value as determined by the law of supply and demand. The substitution of the phrase 'socially useful labour' does not really help the socialist since it raises the difficult question of measuring a person's worth in concrete terms. Is assessment to be on the basis of time or piece work or in terms of the agreeableness or disagreeableness of the task, etc. ?

Further, socialism, like communism, commits the folly of imagining that the good life is something ready-made which the State can hand over to the individual. It forgets that good life is largely self-earned, although the State should provide the material conditions conducive to good life.

In spite of these criticisms, we have no hesitation in agreeing with Sidgwick the at advance in the direction of the socialistic ideal by a *judicious* and *gradual* extension of governmental functions is not opposed to sound economic theory. A more equal distribution is, in a broad and general way, productive of an increase of happiness and is thus an aid to the good life of the community.

6. *The Communistic Theory*

On its economic side, communism attacks the institution of private property. It not only seeks to nationalise the means of production and distribution but also to bring consumption under State control. It is a radical attempt to confine property to use. Communists espouse the theory: from each according to his ability; to each according to his need.

There is no doubt a *prima facie* justice in a social order in which members of the group can live together as members of a family, with no material goods which they can call exclusively their own. Nevertheless, it must be admitted that the difficulties raised by communism are of too serious a nature to consider it a workable preposition. It may be just and reasonable in a community besieged on all sides or temporarily cut off from foreign supplies. It might be just also in a society which has reached its highest possible well-being. But we know of no such societies today.

Communism fails to present a sound social order. It is based upon wrong premises, for, the moment it admits family life into its order, its foundation is shaken; for, family life means preferences, and preferences mean the undoing of the *esprit de corps* of a communistic order. Further, it is well to remember Bosanquet's general principle that as an ethical institution, the State by its very nature is limited to the promotion of good life by negative means. Its function can best be described as a hindrance of hindrances to the best life. Moreover, equality of distribution or anything like it will diminish the goods to be distributed. In the words of Sidgwick: 'Removal of the normal stimulus to labour (bodily and intellectual) and to care which the present individualistic system supplies, would so much reduce the whole produce to be divided, that any advantage derived from greater economy of distribution would be decidedly outweighed even supposing that no material change took place in population.'

A further difficulty is that of fairly apportioning among its members the labour of the community. The usual answer given by Communists to this difficulty is that all should be made to work at every description of useful work. But as Mill says: 'All persons are not equally fit or all labour; and the same quantity of labour is an unequal burden on the weak and the strong'. Nowhere in society, except in a crude and barbarous state, backed by supernatural fears, can it be right to have a group or despotic officials who would assign men to their work and reward them according to their own sole pleasure

and judgment. To quote Mill again: 'The chief criticism of Communism and Socialism is whether there would be any asylum left for individuality of character, whether public opinion would not be a tyrannical yoke'. Once more, communism calls for a cataclysmic change, for a sudden reconstruction of society resulting in a serious dislocation of the present economic and social order. Justice, in one of its phases at least, means the fulfilment of 'expectations arising naturally out of the established order of society'. Finally, the maxim 'From each according to his ability and to each according to his need' is more a moral injunction than a canon of legal justice. Neither individual needs nor capacities can be easily measured. Since real needs and real abilities vary, it seems unjust to reward all alike. Nevertheless, the idea of equality which the theory embodies is too precious to be slightingly rejected. That all should start on exactly equal terms is certainly inconsistent with any view of justice, but in the treatment of individuals justice demands absolute impartiality—what Rashdall calls equality of consideration. In the absence of any special reason for inequality, equality is the only right rule for distributive justice.

7. The Idealistic Theory

The idealists support private property on the basis of personality. Among German philosophers, Kant accepted the institution of private property and laid the foundation of the idealistic theory of property, according to which property is necessary for the realisation of one's will. Hegel carried this view to its logical conclusion and said that property is 'the first reality of freedom'.

According to Green appropriation of property is an expression of will and is an effort of the individual to give reality to a conception of his own good which is at the same time a common good. Property does not rest on contract or on supreme force. It is an instrument of expression and satisfaction. It means that the appropriator takes and fashions certain external things, external to his bodily members, in accordance with his will. When property is thus established, it no longer remains external to him but becomes an extension of his personality through which he gives reality to his ideas and wishes. It is 'realised will' or will made concrete. Through it the invisible self of man is rendered visible. It is a necessary corollary of the right to free life.

To Bosanquet, property is essential for the development of character, for without some property there can be no liberty, and without liberty there can be no proper development of character. Thus

viewed, property becomes an ethical institution.

This way of interpreting the meaning of private property is not to be taken as a justification of the capitalistic system. Personality is not isolated and self-contained, but can exist only in fellowship. Therefore, a legitimate development of personality involves a legitimate development of fellowship. Applied to property, it means that nobody can claim an absolute right to his possessions. Property is a trust and is relative to the common weal. Since all men have a right to develop a worthy human life, all should have in reasonable measure enough 'property to use.'

Further, as Rashdall points out, while we must regard property as essential to the development of character, we must not close our eyes to the bad effects upon character of the present almost unlimited competition and facility for accumulation. If, on the one hand, property is an aid to character, on the other it fosters intense selfishness.

The chief merit of the idealistic theory of property is that it raises the problem of acquisition and distribution from the plane of economics to the plane of personality. Its chief defect is that it is incapable of giving a definite rule of guidance for State control and regulation of property.

The Case for and Against Private Property Summed up

The possession of private property gives man a sense of security. The fact of the propertyless, landless man in the industrial society today is, in some ways, worse than that of the slave. Belonging to no one in particular who may take a proprietary interest in him, the freedom which he enjoys is not seldom the freedom to starve. Property enables a man to provide for the future and affords a sound basis for family independence.

A man of property is said to be one who has a stake in the country. As such he is not likely to be swept off his feet by every new-fangled doctrine leading to violent change. He is a man of deliberation and prudence.

Property promotes a sense of independence. A man who has means at his disposal does not need to accept the work which he does not desire. Laski points out that a man of property can make life an artistic thing. He can devote his means to the fostering of art, science and literature. He has direct access to the social heritage of the ages and is enabled to have a share 'in the life creative'.

According to Aristotle, private property gives its owner opportunity to be liberal and hospitable. As the idealists contend, it is an aid to the development of character and the expression of personality. The individualists are right when they claim that private property gives a man the most effective stimulus to exertion. It is the fear of want and starvation that often keeps man's nose close to the grindstone. Raleigh observes that 'there are many operations connected with the management of land and capital, which are most efficiently performed by private persons, working at their own risk and for their own advantage (*64:111*).' He further notes that it is a matter of common knowledge that officials are less active, less frugal, and less eager for improvement than private traders (*64*).

Further, private ownership gives the individual a deep sense of pleasure and satisfaction which no other form of ownership can give. The magic of private property can convert sand into gold. At least within limits, private property is a measure of a person's ability. It is an extension of the sound economic and moral principle, 'Tools to the man who can use them.'

While these and other arguments may be advanced in favour of private property, the case against it is even stronger. The socialists argue that many of the defects are inherent in the system and cannot be removed by mere education, enlightened public opinion, or social legislation.

There can be no gain-saying the fact that the institution of private property perpetuates the division between the rich and the poor. Inequality begets inequality and divergences breed divergences. Laski is right when he says that 'a community divided into rich and poor is when the latter are numerous, built upon foundations of sand (*74:176*).' While property gives its owner a sense of security, it often leads to luxury and indolence. Those who are freed from the necessity to labour do not generally devote their time and energy to creative effort. While a certain amount of private property may be necessary for the development of character, the same argument cannot be applied to unlimited private capital or to the control which it gives over the lives and destinies of human beings. There is no logical reason why a person should claim property in the instruments of production. To justify private property in all its aspects—unlimited wealth, bequest, inheritance, etc.—is as dishonest as it is unconvincing.

Further, private gain need not be the only incentive to labour. Lord Haldane remarks that the desire to distinguish himself in the

service of the State is as potent a motive with the brain worker as the desire to amass a fortune. Plato was neither a fool nor a visionary when he claimed that the satisfaction derived from performing a congenial task or from rendering public service was a reward in itself.

It is generally admitted that ownership is justifiable only when it is correlated to service to society. But even the staunchest supporters of private property cannot but admit that, at best, there is only a very rough correlation between ownership and service. The law of supply and demand does not always work scientifically. At times it is freakish. As Laski argues, just because there is a demand for slaves in Abyssinia and for obscene literature all over the world, it does not mean that those who supply these needs are rendering great service to society.

Furthermore, if we trace the history of property, we find that property, particularly in land, has not had a respectable ancestry. Some of it is rooted in robbery.

Private property in modern times has certainly meant colossal production, increased prosperity and comfort, maximum utilisation of the natural resources of the world, and marvellous growth of material civilisation. But such progress in the material field has not meant equal progress in the moral and spiritual fields. Values have been vulgarised to a large extent, and there is a widespread tendency to worship power and wealth as such. Modern society is so organised as to whet the desire for personal gain. It teaches a man to compete with his fellow-men and scramble for power and wealth rather than to co-operate with him in achieving common ends. It makes effective citizenship for the masses practically impossible of attainment. Even in the material world, the opportunities for development are not so great as they have been in the recent past. We have almost reached the saturation point.

Laski sums up the case against the present order in these trenchant words: 'The present system is inadequate from whatever angle it is regarded. It is psychologically inadequate because for most, by appealing mainly to the emotion of fear, it inhibits the exercise of those qualities which would enable them to live a full life. It is morally inadequate, in part because it confers rights upon those who have done nothing to earn them, in part because where such rights are related to effort, this in its turn has no proportionate relevancy to social value. It makes part of the community parasitic upon the remainder; it deprives the rest of the opportunity to live ample lives. It is econo-

mically inadequate because it fails so to distribute the wealth it creates as to offer the necessary conditions of health and security to those who live by its processes. In the result, it has lost the allegiance of the vast majority of the people. Some regard it with hate; the majority regard it with indifference. It no longer infuses the state with that idea of purpose through which alone a State can prosper.'

Distribution According to Power to Use

Reducing the idealistic theory of property to practical terms, Prof. Hocking advocates the distribution of economic goods according to a person's ability to use: property to those who can make the maximum use of it. There can be no doubt that the conspicuous waste and luxury of the foolish rich have done more to discredit the institution of private property than almost any other factor.

This power to use may be interpreted to mean distribution according to need in the case of those at the bottom of the economic ladder, distribution according to earning capacity in the case of those occupying the middle ranges of income, and distribution according to ability to use in the case of those at the top of the economic ladder.

The formula of distribution has much to commend it. It stimulates each individual to make himself as useful as possible to himself and to the community at large. It furnishes ample opportunity for each individual to utilise whatever altruism he may have in his nature. It also means the elimination of the unfit members of society and the survival in large numbers of the useful members. Finally it means the fulfilment of the truth that talent should not go unrewarded.

In spite of these theoretical merits, it is very difficult to carry it out in practice. While in many ways it is an improvement on unqualified individualism, the changes proposed by it are not radical enough. Besides, it will probably result in undue inequality between men of great capacity and industry on the one hand and those who are incapable on the other, for it is not easy to measure a person's worth or usefulness to society.

Nevertheless, with the aid of the canon of 'ability to use', we may proceed to draw up a programme of distributive justice which can be put into operation at once, without waiting for the establishment of world-wide socialism. At the bottom of the scale we may place idiots, imbecilcs, and others who are undesirable from the eugenic point of view, segregate them from the rest of the community, and prevent them from propagating their kind, providing them at the same time

with the minimum conditions of civilised existence. In the second group we may place all the dependents, the aged, and the infirm. To them also we would give the minimum conditions of civilised existence. To the unskilled we would give a minimum wage necessary for decent living, constantly endeavouring to promote them to the ranks of the skilled. As for the middle classes, we would allow the law of supply and demand to operate, taking care at the same time to correct and limit the inherent shortcomings of that law by applying the principle of equal opportunity through such means as free education, a progressive income tax, and a graduated inheritance tax. When we come to those at the top of the economic scale, we would rigidly apply the principle of 'ability to use'. If a Ford or a Rockefeller is able to use his wealth in the production of greater wealth in the service of mankind, we would let him have it. If, on the other hand, he uses it for utterly selfish ends, or abuses it in other ways, we would by means of law or public opinion or by both make it impossible for him to hold it.

NOTE ON CITIZENSHIP

EVEN THE BEST form of Government is sure to fail if the people for whom it is provided do not possess sound character. Centuries ago, Aristotle discovered the valuable truth that the success or failure of a constitution depends on the character and temper of the people. Democracy is a great boon, but without a spirit of good citizenship it cannot succeed. Citizenship calls for a passion and devotion to the State analogous to the passion and devotion that the individual has for his family.

The word 'Citizenship' and the related term 'Civics' are derived from the Latin word 'Civitas' indicating thereby that the civic life had its origin in the city states of the ancient world. To the Greeks, to be a good citizen was equivalent to being a good man. Aristotle defined citizenship as the capacity to rule and to be ruled. Both Plato and Aristotle assigned a very important place to the training of the individual in all civic virtues.

Citizenship, like morals, is both a science and an art. It should not only be learned like other branches of study but also assiduously practised. It is character in action. It is another name for social living. No man has a right to be called a good citizen if he does not do all that lies in his power to promote social solidarity.

Citizenship is not mere patriotism. It is much wider and deeper than patriotism. Rightly or wrongly, patriotism is associated in the popular imagination with some form of noble, exalted, and exceptional service rendered to one's country at an hour of great need. It often means preparedness to lay down one's life for the good of the country, and at times has even been construed to mean lying and prevaricating on behalf of one's country when its honour or safety is at stake. In the history of the world there have been not a few great patriots who rendered some striking and conspicuous service to their country at exceptional times, but who were poor citizens in their everyday life and contacts. Even today one may find a good patriot, but not a good citizen, who tries to dodge the ticket collector, the income-tax officer, or the customs official. The world is slowly learning the bitter truth that patriotism in the oft-quoted words of Nurse Cavell is not enough. Citizenship calls for steady, continuous, devoted, intelligent and often

unnoticed and unrecognised service in both small things and big, to one's neighbourhood, one's country, and eventually to humanity itself. Not infrequently patriotism, in its actual working, has been a divisive force : but citizenship is a unifying factor. It knits together man and man and nation and nation in an all-embracing unity. Citizenship rather than patriotism should be the goal of our endeavour.

Citizenship is in the nature of a series of concentric circles. It begins with the home or family but soon spreads into the neighbourhood, the village, the town or city, one's industry or occupation, the country and the world at large. The good citizen should recognise his loyalty to every one of these groups. Citizenship which stops short of loyalty to one or a few of these groups is partial and incomplete. True citizenship means the right ordering of loyalties. A good citizen ought to be a good father, husband or brother, a congenial and useful neighbour, a loyal and intelligent patriot, a faithful worker, a lover of the poor and down-trodden, and an ardent lover of international peace and goodwill. Citizenship is not a mere sentiment or the repetition of platitudes.

The good citizen should not let his loyalty take the form of anti-anything except it be anti-injustice and anti-humanity. His loyalty to the Tamil language and literature, for instance, need not take the form of a crusade against the teaching of the national language, *viz.* Hindi. Neither should his loyalty to Christianity mean in any way anti-Hinduism or anti-Islam.

As indicated already, citizenship is a science which the teacher and taught should learn together and an art which they should live together. The science of citizenship should include among other things :

(1) an appreciation of the worth and dignity of every human being;
(2) an apprehension of the place of the State in the life of the individual and of society ;
(3) an understanding of the right relation of the individual to society and of the necessity of social solidarity ;
(4) a recognition of the correlation of rights and obligations ;
(5) an appreciation of the importance of the proper training of habits, dispositions, and attitudes in children and youth.

Reverence for personality, which is only dimly perceived today, is the first lesson to learn in citizenship. To quote the well-known words of Immanuel Kant : Every man is an end in himself and nobody is a means to another's end ; or, to use the language of the late Lord

Haldane: 'Personality is the great central fact of the Universe'. The leadership principle, accompanied by blind submission to authority which is so dear to the hearts of dictators, does the utmost possible violence to the value of human personality. Individual freedom which is indispensable for the development of personality was spurned by the Nazis who said, 'We spit on freedom. We think with our blood.' True reverence for personality means a genuine faith in the brotherhood of man. Good citizenship calls for a much larger degree of social and economic equality than is considered possible by most people today. The constant endeavour of society should be to enable every man to be the very best person that he can possibly be within the limits of his capacity. There should be a practical reconciliation between the principle of equality and the fact of natural inequality. There should be an 'open career to talent'.

The Worth of 1. the Individual

Human institutions have a value only to the extent to which they are conducive to the development of personality. Failure to recognise this simple truth has meant the slow death of many an ancient civilisation. In a country like ours where the shackles of caste and communalism still remain unbroken, where equality of opportunity and equality of consideration are still largely existent only in the realm of ideas, and where we are still a long way off from realising the principle of 'open career to talent', we need to assert and re-assert the sacredness of every human personality.

It is a truism to say that the ideal good of the individual and the ideal good of society never clash, but in the world of ordinary experience social good and individual good do clash at times; in which case the good citizen should have no hesitation in choosing the higher good in preference to the lower. True citizenship means the harmonious adjustment of the legitimate claims of the individual and of society.

2. Social Solidarity

Plato sought this harmony in his well-known doctrine of justice, according to which functions are to be distributed in accordance with fitness, and the first two classes are to have community of property and community of wives and children. The Hindus have sought this harmony in their doctrine of *Varnasrama Dharma*, which required every individual to maintain the social order by performing the duties of the class to which he belonged and which enabled him to develop his personality through the four stages of life. The medieval attempt at harmony through a universal church State ended in failure. The

conception of modern idealists is summed up by T. H. Bradley in the canon, 'My station and its duties'. The Soviet motto is, 'From each according to his ability and to each according to his need', while the Nazis and Fascists claimed that harmony could be established only when the individual joyfully surrendered himself to the service of the State, as that service was interpreted by a narrow group of persons belonging to a closely-knit and unscrupulous party. For ourselves we believe that the good of a national community should have precedence over the good of a linguistic, racial, sectarian or provincial community, and that the good of the world community should have precedence over all.

3. The Meaning of the State

Rightly interpreted, the State is a true friend of man, and in obeying the will of the well-ordered State we obey ourselves, our own wills purged and purified of their selfishness. Neither the anarchist view that the State is an unmitigated evil, nor the extreme individualistic position that it is a necessary evil is acceptable to us. We look upon the State as we ourselves in a different capacity. This view of the State, however, is not to be interpreted to mean State-absolutism or State worship: for citizens do not exist for the State, but the State exists for their sake. The State is the instrument for the realisation of man's highest purposes. The end of the State, as Aristotle says, is good life or the promotion of a community of well-being. When such a State becomes selfish, it may be the duty of the individual to resist it but even when resisting he must remember that he is a citizen. If, therefore, the true end of the State is to be realised, what we need is not a mechanical discipline but a 'liberal and reformed loyalty to chosen ideals'.

One of the first lessons to learn in citizenship is that the policeman in the street corner directing traffic, the judge who pronounces his verdict upon cases from day to day, the income-tax officer who sends us a notice to remind us of our dues to the State, nay, even the sweeper who cleans our streets—these and others like them are our true friends. This kind of constructive citizenship is unfortunately lacking in India.

4. Correlation of Rights and Duties

Our understanding of citizenship will be altogether inadequate if we do not lay hold of the truth that every right carries with it a corresponding obligation. Too often emphasis is placed upon rights to the exclusion of duties. It is easily forgotten that rights and duties are correlatives.

(For further details see Chapter on 'Theories of Rights'.)

5. Training in Character

Training in citizenship is nothing less than training in character. Therefore, utmost care should be taken to train children and youth in healthy habits, dispositions, and attitudes. Mere theoretical teaching and sermonising can be of no avail in producing the kind of citizens we desire. Teachers of youth should themselves be men and women of character if they are to influence youth in the right direction. A good teacher should first and foremost be a good man or woman in as much as training in citizenship means training in right social living. It would be disastrous to good citizenship to bring up generations of children who have no instruction in elementary morals, children who do not understand and appreciate the value of honesty, truthfulness, justice and fairplay, dependability, mutual good-will, co-operation, and public spiritedness. It is regrettable that, in the name of religious toleration, there is in India an increasing antipathy to the teaching of religion and even of morals in State-aided educational institutions. No religion worthy of the name can object to the inculcation of the above-mentioned simple virtues especially when they are inculcated more by indirect than by direct methods.

Education for Citizenship

If a new and enduring social order is to be created, its foundations should be laid deep at the home and the school. Education for a long time has been unduly governed by utilitarian considerations. The time has now come for a new orientation of education in order that, among other things, we may train boys and girls for a life of citizenship.

Sir E. Simon distinguishes three aims of education, each of which must play an important part in the new social order. The first of these is the enabling of children to make their way in the world and to earn a living. The aim of education, therefore, becomes the provision for children of knowledge and skill to overcome the demon of unemployment. The second is cultural ; to enable youth to appreciate the finer values of life ; and the third is training for citizenship. Man being a social animal, education should enable him to take his legitimate place in society and contribute to its strength and unity. The development of civic consciousness thus becomes the principal aim of sound education. As Ruskin rightly remarks : 'Education is not to teach people what they do not know but to behave as they do not behave'.

The traditional view has been that citizenship is not a subject which should be taught directly but something which can be taught indirectly through a general training of the mind, particularly with the help of the classics. We do not believe that such a view can stand the test of experience. 'Nobody', remarks E. Simon, 'thinks of training doctors through Hebrew or engineers through theology.' We believe that it is as necessary to impart to pupils lessons in citizenship as it is to inculcate in them fundamental moral qualities. A knowledge of the broad facts of politics and economics should be made available to every young man and woman. As many as possible should be taught the elements of civics, of political institutions, and of social and political theory. We want our universities not to become 'professional schools' as in Germany and France but to lay a true foundation of liberal education in addition to what professional and technical education they may impart.

The Duties of Citizenship

It is unfortunate that many people seem to think of citizenship only in terms of rights. They rarely emphasise the duties which citizenship involves. This tendency is probably due to the mistaken idea that the State and its government are engines of oppression and that, therefore, we should not render to them any more obedience than what is strictly required on pain of punishment.

The duties of citizenship may be classified under legal and moral duties, although there are some which are both legal and moral. It is obvious that violation of legal duties is liable to be punished by law, whereas violation of moral duties cannot be so punished. Among the fundamental legal duties may be mentioned respect for law, assistance in maintaining public order, service on the jury, national defence, payment of taxes, rates and cesses, exercise of the vote, education of one's children, and maintenance of public health and sanitation.

Some of the principal moral duties are the study of citizenship, cultivation of public spirit, proper exercise of the vote, self-reliance, education, care of health, thrift, help of the weak, and resistance to the State when absolutely necessary.

Hindrances to Good Citizenship and Their Removal

Bryce speaks of indolence, private self-interest, and excessive party

zeal as hindrances to good citizenship. Sheer indifference prevents many from studying and reflecting upon public questions. Very few voters in any country take the trouble to think before they vote. So often they vote according to the dictates of party leaders or in order to oblige their friends. There is another group of people who fail to reflect seriously on political questions because of the daily struggle to earn a livelihood, want of time and opportunity, imperfect education, and absence of contact with public life.

Self-interest is another great enemy of good citizenship. It is easy to get into the frame of mind which says that it is best to leave political questions to government officials and professional agitators. The excuse, 'politics is a dirty game', is often given to hide one's own indifference and gross selfishness. If all good citizens in a democratic country refrain from taking an interest in civic and political questions, it is obvious that way will be prepared for dictatorship, oligarchy or mob-rule.

Excessive party zeal is undoubtedly inimical to good citizenship. If parties come to mean the rule of selfish cliques and the use of high-sounding phrases and programmes to countenance jobbery and corruption, it is time to abolish them altogether or at least seriously to modify them. In the words of a recent writer, 'A party is legitimate and useful when it is organised on a principle and embodies a doctrine. It is dangerous and illegitimate when it blindly follows a leader and concentrates its efforts to seize or to keep political power or some other more distinctly material benefit'.

An evil altogether peculiar to India is that of communalism. People are trained to think not in terms of the entire national community, but of the particular religious groups to which they happen to belong. Smaller loyalties are encouraged and fostered at the expense or even to the exclusion of larger loyalties. The public life of the country is vitiated by communal feeling and narrowness.

For removing these hindrances, Bryce suggests certain 'mechanical' and 'ethical' ways. Under 'mechanical' may be included changes in laws, institutions, and political methods; the 'ethical' ways are improvements in the character and spirit of the people.

Under the 'mechanical' devices an important place would be given to the promotion of literacy and training in local self-government. It goes without saying that an uneducated and ignorant mass is the poorest possible material for good citizenship. 'Universal education', say Taylor and Brown, 'is a necessity in government of and by the

people (*77: 26*).' Equally important is training in self-government. We cannot expect to turn out good citizens from people who have been used to autocracy in every walk of life and have not learned to govern themselves through neighbourhood organisations, municipalities, district boards, and the like. Bryce contends that 'the habit of self-government is the best training for democratic government in a nation. Practice is needed to verify knowledge.'

As far as India is concerned, the structure of the government should be so changed as to discourage communalism and provincialism and encourage nationalism. While law alone cannot accomplish this result, it is undoubtedly one of the important means to that end. Genuine self-government is another way of strengthening citizenship. Civic enthusiasm cannot rise to a great height as long as the social, economic, and political organisation of a country grinds the people down to poverty and ensures the safety and continued prosperity of vested interests. Social injustice, unmeaning equality, gross discrimination, and political favouritism are sure to sap the vitality of citizenship.

On the 'ethical' side, the first place should undoubtedly be given to proper home training. The home is the nursery of many virtues. It is there that the foundations of future character are laid. If in a good home the child learns such virtues as self-forgetfulness, consideration for others, generosity, co-operation, and broad-mindedness, in a bad home it imbibes selfishness, disregard of others, meanness, rivalry, and narrow-mindedness. The Catholic leaders are right in saying: 'Give us the child until he is seven and you may have him for the rest of his life.' It is during childhood that habits are formed and dispositions and attitudes are shaped. Such being the case, the value of a good home for citizenship is incalculable. This means, among other things, educated fathers and mothers who have a devotion to the State and a keen desire to serve. Mrs. Bosanquet describes the family as 'the great discipline through which each generation learns anew the lesson of citizenship.'

Equally important with the home is the school. We have already spoken of the urgent necessity of literacy; but literacy alone cannot produce good citizens. We need a system of education which will train pupils for social living, encourage co-operative methods and group ideals, mould character, and instil a legitimate national pride and national spirit. Eldridge remarks: 'Competent citizenship is based on at least an elementary knowledge of history, sociology, economics, and

political science, especially those phases thereof that illumine the problem of the particular citizen (*18 : 133*).' It is a fatal mistake for the teacher to assume that his task is simply to teach the science of citizenship and that the part of the pupil is to accept and practise what he teaches. Only a public-spirited teacher can teach citizenship effectively, and he alone has a moral right to teach it.

Occupation groups, too, can become effective instruments in training for citizenship. The common tendency is for them to cultivate exclusive attitudes and fend for themselves. The good citizen should remember that while earning a living is a sacred duty of every person, it is not right for him to allow his economic interests to crowd out his political functions. 'The ultimate function of all industry is social service (*77 : 41*).'

Caste-groups, when properly liberalised by, and informed with, a spirit of patriotism and a love of service, can become agents in the promotion of civic virtues. For good or evil the caste system is with us. There do not appear to be many signs of its breaking down completely in the near future, although untouchability has been legally banned. Already a new spirit has been breathed into caste, which may give it anew lease of life and make it a power for good. The caste organisation has a hold upon its members which few other social organisations have on theirs. Therefore, it is reasonable to think that if the spirit of exclusiveness and pride is removed from caste, it may become a logical and effective factor in the training for citizenship. There may very well be healthy rivalry and emulation between the different caste groups in their eagerness to improve their social, economic, and educational conditions and in their devotion and service to the nation and the State.

The press, the platform, the church, and neighbourhood organisations of various kinds also have a very important part to play in inculcating civic virtues. They should emphasise such ideals as order, progress, service, freedom, justice, co-operation, national unity, and international peace and international responsibility. The press which indulges in one extreme point of view or in half-truths, the orator who works on people's emotions for his own advantage or for that of a small group, the church or religious organisation which fosters contempt or hatred of those outside its own walls, and the neighbourhood organisation which loses the wood in the trees and cultivates a parochial outlook—all these are guilty of doing a distinct disservice to the cause of citizenship.

Citizenship is not a mere political function. It is a social and moral function as well. The good citizen should be a good man in every walk and activity of life. For this purpose all his human relationships should be of the highest order. In the words of E. M. White, the three essential qualities of good citizenship are commonsense, knowledge, and devotion. To use the language of the same writer again, the citizen should take a wide survey. He should have a historical basis. He must connect the past with the present and the future. With his feet in the road of order, he must turn his face towards progress. All preparation for citizenship is useless unless citizenship is practised. The good and faithful citizen should take an oath to himself, very much like the Ephebic oath taken by Athenian young men in the beginning of the second year of their military training : 'I will not bring dishonour upon my arms, and I will not desert the comrade by my side. I will defend the sacred places and all things holy, whether alone or with the help of many. I will leave my native land not less but greater and better than I found it. I will render intelligent obedience to my superiors, and will obey the established ordinances and whatsoever other laws the people shall harmoniously establish. I will not suffer the laws to be set aside or disobeyed, but will defend them alone or with the help of all. And I will respect the memory of the fathers. The gods be my witness (*46 : 126*).'

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9

THE PROPER SPHERE OF STATE ACTION

THE QUESTION of the proper sphere of State action was not of such primary importance in the early days of political speculation as it is in modern times. To the Greeks good life meant freedom within the 'polis' and the good of the individual was identified with the good of the State. There were occasional instances of conflict between the individual and the State, as in the case of Socrates. But the prevailing belief was that the State might properly embrace everything which had to do with the life and the highest development of the individual.

Neither in the Roman times nor in the unsettled conditions which followed was the question of the proper sphere of State action of first-rate importance among political thinkers. The mediæval period was characterised by a long and bitter struggle for supremacy between the Church and State. in which final victory went to the new nation States, which came into existence at the end of the mediæval period. In dealing a death-blow to the fissiparous tendencies of feudalism. the monarchs soon strengthened their position and established absolute rule over their subjects. Their absolutism came to be shielded by the doctrine of the Divine Right inculcated by some of the Protestant Reformers. From this time on there came into being a sharp antagonism between the interests of the rulers and those of the ruled. A struggle ensued on behalf of the people, and in the course of this struggle the theory of natural law played a very important part.

John Locke in the seventeenth century was the philosopher of this movement ; the limits of state action, he said, were to be determined by the natural and inherent rights of man. This theory was universally accepted in the 18th century and was made the philosophical background of the *laissez faire* theory of the 19th century, which in some form or other has come down to modern times. The attitude of mind expressed by Spencer's phrase 'Man *versus* the State' is practically dead today and is being replaced by the idea of 'the group *versus* the State.'

1. Individualism

The *laissez faire* theory arose as a natural reaction to the mischievous and meddlesome interference which characterised the relation of the State to the individual prior to the eighteenth century. There were, for instance, petty laws relating to the type of food that people should eat on certain days and the kind of cloth in which the dead should be buried. There was also undue restriction on the freedom of trade. With the coming of the industrial revolution in the eighteenth century there was bound to be a reaction against all these forms of State action. There were new inventions revolutionising the economic life of the people. Goods were being produced on a gigantic scale and new markets were being won where these goods could be sold. In these circumstances, it was natural for men of industry, enterprise, and originality to claim the right to be left alone as far as possible so that they could utilise their powers to the maximum advantage.

In the light of this background, it is not surprising to find that individualism holds that the State is an evil, but an evil necessitated by the selfishness and rapacity of man. It is a concession to human weakness. Individualism assumes that but for the restraining power of the State there would be no social peace and order. The State should therefore give its undivided thought and attention to the protection of the individual, but the promotion of his welfare falls outside its scope. Its main business is the suppression of violence and fraud. The guiding principle of the individualist is (maximum possible individual freedom and minimum possible State action.) The State, he holds, is within its bounds when it seeks to interfere with the liberty of the individual in the interest of its own protection. But it has no right to interfere when the good of the individual and his good alone is in question. In the words of J. S. Mill: 'Over himself, over his own body and mind, the individual is sovereign.'

Individualists are not all agreed on what constitutes the legitimate functions of the State. Extreme individualists such as Spencer limit the sphere of State action to:

(a) the protection of the individual against external enemies;
(b) the protection of the individual against internal enemies; and
(c) the enforcement of contracts lawfully made.

Individualists of a moderate type are prepared to go much farther. The functions of the State as conceived by them are neatly summed up by Gilchrist as follows:

1. Protection of the State and individuals from foreign aggression.
2. Protection of individuals against each other, that is, from physical injury, slander, personal restraint.
3. Protection of property from robbery or damage.
4. Protection of individuals against false contracts or breach of contract.
5. Protection of the unfit.
6. Protection of individuals against preventable evils such as plague or malaria (*28: 397-8*).

The individualists support their position from three different points of view: the ethical, the economic, and the scientific.

1. The Ethical Argument

It is admitted that freedom of action is essential to the development of character. Without such freedom the individual becomes a mere automaton. What gives joy and meaning to life is liberty to mould one's life according to one's ideals. The highest development of the individual is possible only when there is opportunity for self-reliance. When the individual is thrown upon his own resources, a powerful incentive is provided for the exercise of his powers of initiative, enterprise, and originality. If he possesses any intrinsic worth, it has an opportunity to manifest itself.

Government action is legitimate up to a certain point. But beyond that it cramps the individual. Over-government kills his sense of initiative and substitutes reliance on government for self-reliance. It creates a pauper mentality, for the individual is tempted to be lazy and indolent and expects others to do for him what he should do for himself. He receives no stimulus for the development of his talents; the consequence is that both the individual and society are losers. Over-government not only destroys powers of self-help but also tends to reduce society to a dead level. People are moulded after a single pattern, and premium is placed on the 'standardised individual'. Non-conformity is considered a serious offence. Society becomes static and every innovation is viewed with grave suspicion. In order, therefore, that the individual may develop his powers to the maximum, it is argued that governmental action should be narrowly limited. Government should not attempt anything more than to enforce contracts, to keep the peace, and to punish crime.

From the point of view of the economic life of man, individualism assumes that every man is self-seeking and that he knows his interests

best. Therefore, the argument runs, if every person is left to himself he will make the best use of his opportunities, benefitting himself directly and society indirectly. Thus if the capitalist is left alone he will look around to see where he can invest his capital to the best advantage. Likewise, the labourer will look around to see where he can get the most advantageous terms for his services and offer his services there. Free competition and unrestricted operation of the law of supply and demand are thus in the economic interests of society. Prices, wages, rent, and interests should all be unfettered so that they can adjust themselves to the prevailing economic conditions. Similarly foreign trade should be left free. Artificial aids such as high tariffs and bounties to infant industries should be discouraged. Beyond providing that the market is kept free and open and that fraud and treachery are not practised on one another by the members of society, the State has little to do in the economic field.

2. The Economic Argument

Individualism is said to be in accordance with the biological law of the struggle for existence and survival of the fittest. Herbert Spencer is a chief exponent of this argument. He holds that the law by virtue of which life has evolved in the case of the lower animals and the sub-human species is this law of the struggle for existence and survival of the fittest and argues that the same law should be allowed to operate in the case of man, too, if we are to evolve a race of strong, able, and virile human beings. The natural course of progress means that the poor, the weak, and the inefficient must go to the wall. Although such a course means injustice for some individuals, the interest of society demand it. In Spencer's own words: 'Pervading all nature we may see at work a stern discipline, which is a little cruel that it may be very kind. That state of universal warfare maintained throughout the lower creation, to the great perplexity of many worthy people, is at bottom the most merciful provision which the circumstances admit (*74:322*).' The conclusion of the matter, according to Spencer, is that by leaving individuals to themselves the strong and fit will survive and the unfit will be eliminated. This means that the State should undertake only functions which are 'negatively regulative'. To undertake positive measures such as the enforcement of sanitary legislation, the provision of public education, public parks, public libraries, and poor relief, the management of post offices, and the issue of currency, is to interfere with the wise

3. The Scientific Argument

provision of nature.

4. Practical Difficulties To these theoretical arguments certain practical difficulties are added by the adherents of individualism.

It is argued that when the government attempts to do many things it does them badly. It means red tape and routine, resulting in unnecessary delay and much waste. A great deal of necessary work is left undone. Experience shows that governmental interference produces bad results in many cases. As contrasted with private management, government management produces numerous failures. It lays the door open to jobbery and corruption. Governments make and unmake laws. This shows, says Spencer, that many of these laws should never have been enacted.

Besides, the administration of laws is not seldom irksome to the people, either on account of the natural aversion of man to official interference or on account of the nature of the law.

Criticism :

Individualism contains an important truth but it grossly exaggerates it. It over-emphasises one aspect of man's social life at the expense of others. In reacting against petty laws and meddlesome legislation, it goes to the other extreme. The arguments sketched above in its favour are decidedly one-sided and, to some extent, even false.

It will be readily conceded to the individualist that self-help is the best kind of help and that governmental policy should be so framed as to enable each individual to stand on his own feet. This does not mean, however, that the State should merely provide protection and repress crime. Complex modern civilisation makes it difficult, if not impossible, for the individual to develop all his powers harmoniously. There are many situations in the life of today which the individual himself cannot control and for which he requires the action of the State. Without extended State action, there seems no hope for the vast majority to develop themselves fully. Unadulterated individualism, instead of producing individualities, produces non-entities. In the words of B. Bosanquet: 'An uncriticised individualism is always in danger of transformation into an uncritical collectivism.'

The basis of individualism is unsound. It assumes that man is fundamentally selfish. It bases itself on the hedonistic theory which has long since been exploded. Man possesses not only self-regarding impulses but also other-regarding impulses. Egoism and altruism are present in every man in varying degrees. Therefore to build an entire

theory of State action on a single aspect of human nature is not proper. Individual welfare and social welfare are not opposed to each other. They are dependent upon one another. H. G. Wells is not wrong when he says: 'Self interest never took a man or country to any other end than damnation.'

Individualism assumes that every man knows his own interests best. Experience shows that this is not true in a large number of cases. The individual may know his present interests, but there is no assurance that he knows his future interests too. Further, even if the individual is the best judge of his interests, it does not follow that he is necessarily the best judge of the means to such interests. As Garner observes, there are in every country ignorant people who cannot take precautions against dangers of which they are unaware. Sometimes the State is a better judge of a man's intellectual, moral, or physical needs than is he himself, as, for instance, in matters relating to public health and sanitation. General well-being can be protected only when insanitary conditions are removed by the State, the quality of the food offered for sale is supervised by it, and dishonest traders and quacks are punished by it. It is the duty of society to guard individuals against their own ignorance and moral crookedness. Even such an ardent champion of individual liberty as J. S. Mill admits that society should protect a man against himself when he tries to cross an unsafe bridge or contracts himself into slavery.

The individualist argument is that if each man is allowed to pursue his own interest. everybody will be happy and society will become prosperous. This will be true if the interests of men run parallel to each other and there is no contradiction between them. But experience shows that they are often at cross purposes with each other. We, therefore, require the might of the State to adjudicate differences and to see that no undue advantage is taken of individual weakness.

The starting point of individualism is 'the atomic individual with a fringe of right (*9 : 245*).' Such an individual, it need hardly be said, is only a figment of the imagination. Society is an organism. Therefore the interests of the individual are not entirely different from those of his fellowmen. The State is not an evil, but a positive good. It is not an artificial creation, but a natural growth. Governmental regulation does not necessarily mean curtailment of individual freedom. Wise restrictions on the individual's impulse to do what he pleases enlarge and secure the rights of all, as in the case of a policeman who directs the traffic. The State is not hostile to liberty and all

restraint is not an evil. 'The State emancipates and promotes as well as restrain (*22 : 291*)'. Collective wants of society can be only satisfied through collective action.

The individualist places implicit faith in the law of supply and demand and free competition. It is a well-known fact that the law of supply and demand is not as scientific as it is made out to be. Often it is freakish. As for free competition, there is very little of it in practice. It leads to monopolies, trusts, and combinations, the opposites of free competition. The need for a policy of non-intervention in industrial matters is not even half as great today as it was at the time of the Industrial Revolution. Conditions are very different. New cities have sprung up everywhere. Labour is drawn from the country districts to the cities to work in factories. Large-scale production has taken the place of old home industries. Means of transportation have increased rapidly. The individual is more than ever dependent upon his fellows. Under these changed conditions it is absurd to argue that a policy of non-intervention is the soundest policy. We need, and do have, 'housing laws to prevent over-crowding and pestilence ; labour laws to prevent child labour and "sweating", factory laws to forbid unguarded machinery and undue danger to life (*28 : 406*).'

The scientific argument advanced by Spencer is open to several objections.

The term 'fittest' is a relative term. What is fit today may not be fit tomorrow and what is fit in one situation is not necessarily fit in another. Survival of the *fittest* does not necessarily mean survival of the *best*. All that the law of the survival of the fittest seems to mean is that that which survives deserves to survive. This is clearly absurd. For, 'if the sole test of fitness to survive is found in the fact of survival, then the prosperous burglar becomes an object of commendation and the starving artisan a target of contempt (*51 : 346*).' Hallowell writes : 'Spencer made the fatal mistake, which many continue to make, of transferring concepts that are appropriate to one science to another where the phenomena are quite different.'

Moreover, what is true of the lower animals is not necessarily true of man, the noblest of creatures. For, when we arrive at man in the scale of evolution we arrive at a startlingly new stage of development. The lower animals passively allow themselves to be adapted to nature. Man, on the other hand, on account of his superior intelligence, is able actively to adapt nature to his needs. Therefore, it seems logical to conclude that instead of allowing nature blindly to fit a few to survive,

man by using his higher intelligence, should fit as many as possible to survive. Man differs from the lower animals not only in the matter of intelligence but also as regards conscience and highly developed sympathies. These faculties induce him to condemn cruelty to the unsuccessful in life and the ruthless waste of the physically weak.

In answering the practical difficulties, it may be said that the fact that governments make mistakes is not necessarily a condemnation of all State action. Individualists point with much satisfaction to the many mistakes made by government and its officials. They forget that private agencies, too, commit errors. But their mistakes are not so patent or so well-known to the public. Those of government, on the other hand, are generally known to everybody. Furthermore, if the government commits errors, it also performs many good acts, for most of which it does not receive due praise. As a matter of fact, the public expects the government to function much more efficiently than private individuals can. Hence the blame attached to the failure of government is proportionately greater.

As Gilchrist points out, with the advance of democracy the need for individualism is not as great today as at an earlier time. Where democracy prevails and where local government is strong and capable, the line between socialism and individualism tends to become less clear. The objections of individualists to centralised regulation do not have much force with reference to local regulation. In other words, 'municipalisation' is not open to some of the objections to which 'nationalisation' is open.

Some individualists tend to confuse individuality with eccentricity or oddity of character. This is particularly true of Mill, who treats the individual as a self-centred entity rather than as an intrinsic part of society.

If prevention is better than cure, the State should prevent injury to society as well as cure injury. Pure non-intervention in the conduct of government is impossible. Its logical conclusion is anarchism. To use the language of Leacock, it divorces individual from social rights. It overlooks the plain advantages of co-operated and regulated efforts.

Among the various arguments advanced against the individualistic theory by Laski, the principal one is that it is morally inadequate. Laski observes that it means 'poor health, undeveloped intelligence, miserable homes, and work in which the majority can find no human interest. Undue advantage is taken of weakness. The bargaining capacity of the labourer not being the same as that of the capitalist,

the labourer often loses out in the economic race. The higgling of the market is the apotheosis of inequality *(47 : 191)*'. Supply and demand do not in any way indicate a social value in the reward secured. Great fortunes are made in advertising enterprise, in slum houses and the like. The higgling of the market, so far from being a measure of social value, is likely to destroy all social value.

Summing up the case for and against individualism, Gilchrist notes the following points :

(1) Individualism emphasises self-reliance.
(2) It combats needless governmental interference.
(3) It urges the value of the individual in society.
(4) It has helped to destroy useless laws of petty interference.

'But it exaggerates the evils of state control when it forgets that there are more instances of good state actions than of bad. It gives a fundamentally false conception of individuality, and finally, it has proved quite unfitted for the complexity of modern life *(28 : 408)*.'

C. D. Burns sums up the matter in these words : 'Individualism involves the neglect of the social causes and social results of action... (It) suffers from the unconscious metaphor of atoms. (Nevertheless), Individualism as an ideal has a very great future. Its limitations and mistakes of the past are obvious enough, but it has survived them .... To do full justice to Individualism...we must separate its soul from the accidental form in which it was first embodied; and we must see, in a dream of the future, the civilised State, an association of individuals as far more developed than the best of us now as these are better than the primitive barbarians, our ancestors *(9 : 249-537)*.'

V. Socialism

The socialist regards the State as a positive good. Therefore, instead of minimum possible State action, he wants the maximum of it. He believes that this is the only way by which social justice can be made possible for the bulk of mankind. He aims at a 'co-operative commonwealth controlling all the means of production and regulating distribution according to some method of joint control'. Under socialism there would be a common ownership of the means of production and of exchange, wages would be according to needs. Some socialists advocate equal distribution, others equitable distribution.

The chief merits of socialism are :

Socialism protests against the obvious evils of our present social system and urges the need for a radical change. Money and power are concentrated in the hands of a few, and the labourer does not receive his proper due. Since the bargaining capacity of the labourer is not equal to that of the employee, the working man is often obliged to make a forced agreement. The present system leads to grave inequalities of wealth and opportunity. It is also responsible for enormous waste and the duplication of services. There is no planned economy on a nation-wide scale. Unrestricted competition leads to lower wages, over production, cheap goods and unemployment. The present system further tends 'to beget materialism, unfairness, dishonesty, and a general lowering of the standard of individual character (*22 : 302*).'

Careful planning under socialism will avoid duplication, over-production, unnecessary advertisement, and the production of harmful goods. The socialistic ideal places a much-needed emphasis on altruism and on the cultivation of a desire for social usefulness and for the love of activity for its own sake. Collective ownership and collective management, it is claimed, are thoroughly democratic. According to its supporters, socialism is the next step in democracy. Where socialistic policies and programmes have been adopted in practice, they have succeeded on the whole.

There is no gainsaying the fact that many of the evils pointed out by socialism in our present industrial system are true. We may further concede to the socialist that the only remedy for those evils lies in the substitution of a new economic and political system for the present. But all this does not mean that socialism has proved its case. The practical difficulties in making it a living reality are too many to be ignored.

The difficulties of administration will probably be stupendous under socialism. The post office, telegraph, and telephone systems are no doubt managed with considerable success in most countries. But in the absence of competition, we cannot say that they are run on the most economic lines possible. The Postmaster-General of England, some years ago, contended that under private management the postal system of that country could be run much more efficiently. Even if we grant that the few national enterprises of today are conducted most economically and efficiently, it does not follow that a wholesale nationalisation of all industries will have the same admirable result. Critics of socialism say that a multiplication of State activities means that the governmental machinery will break down under its own

weight. The socialist, it is rightly contended, is over-optimistic in the matter of government management.

At the present stage of man's moral development, socialism would mean a tremendous increase of opportunities for corruption, intrigue, and personal spite.

Socialism, it is said, is not conducive to progress. The incentive to labour will probably be destroyed. The activities of the average man today are determined for the most part by the desire for gain and not by any altruistic motive nor by the desire for social usefulness. The socialistic State is likely to check individual initiative. Life would become uniform and even stagnant. New wants would not be stimulated under a governmental regime.

The working man is not as powerless as he is sometimes pictured. Through trade unions and other forms of combination he is not infrequently able to strike a bargain advantageous to himself.

Socialism is likely to mean a restriction of individual freedom and a deterioration of individual character. Herbert Spencer believes that each member of the community as an individual would be a slave of the community as a whole. Socialism would repress individuality. Genius would be stifled and citizens would become lethargic. Individual spontaneity and responsibility would be sapped by bureaucracy and departmentalism would reign supreme.

Production might suffer both in quantity and quality.

Evaluation of the Truth in Individualism and Socialism. Both Individualism and Socialism contain an important truth. Both grossly exaggerate it. Both of them, further, are theoretical and doctrinaire. Just as pure individualism is an impossibility so is pure socialism. What we need is a system which would somehow preserve our individualities and yet keep society intact as an organic whole. Burns is right when he declares 'If we could imagine an ideal at once individualistic and socialistic, such would be the effective ideal for most thinking men (*10 : 275*).' For, to quote the same writer again, 'If on the one hand we tend to isolation and selfishness, on the other we tend to lose our individualities in the flood and complexity of "The Great Society"....The Individualist is right in aiming at the variety of individuals, and so is the Socialist in impressing on all their common interest ; for the fullest development of each is to be found in the performance of his function in the life of the whole (*10 : 275*)'.

Notwithstanding the obvious defects of socialism, it is perhaps the part of wisdom to adopt a policy of judicious and gradual extension

of State activities in the direction of the socialistic ideal,* aiming at the same time at the moral elevation of mankind. Free competition may be allowed at the lower levels of production, but when we come to large-scale production which affects the lives of many people, State ownership and control might well be the order of the day.

3. Idealism

Leaving out the extreme forms of idealism as found in Hegel, and confining ourselves to the English idealists, we find there a theory of State action which merits serious consideration. The idealists take an exalted view of the State, regarding it as the embodiment of the best in every man. The State is to them an ethical institution and in obeying it we obey ourselves. Seeing that the idealists give such a glorified place to the State, one would expect them to assign a very wide range of activities to it. Yet, as a matter of fact, they narrowly limit its sphere. The explanation for this seeming contradiction is not far to seek.

To the idealists, the end of the individual and the end of the State are one and the same, *viz.*, the realisation of the 'best life' or the promotion of the excellence of human souls (Bosanquet). This end, however, is of such a personal and inward character that for the most part it can be realised by individual effort alone. Moral good is essentially a self-earned good. A further reason for leaving the individual to earn his own moral life is that the instruments at the disposal of the State—force and compulsion—are of so external a character that they cannot very well promote such an inward grace as moral perfection. In the words of Bosanquet, 'the general will (of the State) when it meets us as force and not as a social suggestion which we spontaneously rise to accept, comes to us *exhypothesi* as something which claims to be ourself, but which, for the moment, we more or less fail to recognise', with the result that we are abandoned to automatism or stirred to rebellion.

The sphere of State action is therefore negative. The State should provide an opportunity for the individual to earn the best life possible for him by removing the obstacles which stand in his way. This means

* Hobson remarks: 'That State has assumed the duties of a docter, a nurse, school-master, trader, manufacturer, insurance agent, house builder, town planner, railway controller, and a hundred other functions.'

that the function of the State is the 'hindrance of hindrances' to the best life or an 'adjustment of all adjustments'. To undertake more than that would mean a frustration of the moral purpose of the individual. The excellence of human souls, as said already, is a self-earned good. It cannot be given from without. Even if it be possible no one has the right to give it. The promotion of the good life through hope of reward or fear of punishment is a meaningless expression. As Bosanquet puts it : 'To attempt to assign material success in proportion to true merit and social service would be flatly contradictory.' Religion and morality are of such a personal and spiritual nature that when the State begins to enforce them or even to promote them, except through very delicate and indirect means, they lose their value. In matters concerning conduct which come under the law, State activity on account of its negative character, is limited to external acts. Intention may be, and often is taken into consideration, but only in so far as it affects conduct. The State can enforce only as much intention as is necessary to insure on the whole compliance with requirement stated in terms of movements affecting the outerworld.

Motives fall outside the purview of the State. They concern the inner man and there is no way by which the State can judge them. From the moral point of view there is no hard and fast distinction between motives and intentions. But from the legal point of view, the idealist insists on such a distinction. For example, the State can compel parents to send their children to school, but it cannot go behind the compulsion and enforce any particular motive. A parent may send his child to school out of a high motive or a low one, but so long as the external act is performed the law is satisfied. Intentions, however, are important. Because it is the element of intention that makes the act a voluntary one. No one, for instance, will ordinarily be punished for an unintentional or accidental act. Even if he be punished, the penalty will not be severe. The law has to take an external measure of intention, thus tending to take an external view of both actions and intentions.

In the language of T. H. Green, 'only external actions can be matter of obligation. The ideal of law must be determined by reference to the moral end which it serves. Law *can* only enjoin or forbid certain acts ; it cannot enjoin or forbid motives. And the only acts which it ought to enjoin or forbid are those of which the doing or not doing *from whatever motive*, is necessary to the moral end of society (*29:p. IX*).'

On the basis of this principle, Green condemns much legislation which has tended to weaken religion, self-respect, or family feeling. Applying his formula of 'removal of obstacles to good life' to the conditions prevalent in England in the latter part of the nineteenth century, Green makes a powerful plea for compulsory education, regulation of liquor traffic, greater control of land ownership, and interference with freedom of contract in cases where the contracting parties are at different levels of bargaining power. Illiteracy and unrestricted sale of liquor are hindrances to the best life. Therefore, the State should remove them by providing for compulsory education and for restrictions on the sale of liquor. Most parents recognise the value of education for their children so that to enforce compulsory education does not mean in their case the deadening of spontaneity of action. 'Compulsory education need not be "compulsory" except to those who have no spontaneity to be deadened (*29: p. IX*).' Much the same considerations apply to the regulation of liquor traffic. If unrestricted sale of liquor prevents a great number of people from realising the best life possible for them, it is the duty of the State to place restraints on the liquor trade. In the matter of interference with 'freedom of contract', Green rightly contends that 'we must consider not only those who are interfered with, but those whose freedom is increased by the interference (*29: p.XX*)'. As regards land ownership, Green's ideal is a class of small proprietors tilling their own land.

Among those who do not subscribe to the idealistic view of State action, there are many who are quite willing to recognise that higher goods like religion and morality are incapable of enforcement by the State. But they see no reason why the State should not regulate economic and social relations with a view to the promotion of the general good. Bosanquet's answer to this interpretation of State action would be that economic and social life is not entirely different from moral and religious life. Economic and social goods have a close relation to moral and spiritual goods. A good house, for instance, may often mean good manners, decent morals, and a fairly high type of religious life. Therefore, State activity in the matter of the lower as well as of the higher goods can be only of an indirect character. Material goods, no less than spiritual goods, when self-earned, are of more value than when they are provided for us from without. There may, however, be situations in which material conditions are positively hostile to the realisation of the good life. In these cases it is the duty of the State to remove such obstacles. But even here, Bosanquet

contends, it is well to recognise the fact that to the extent to which material goods enter into the higher life and are 'charged with mind and will', the State cannot enforce them except indirectly. This is why 'bodily health, comfortable homes, effective income, etc.' cannot be provided by State compulsion. The only cases where the State can take direct measures for the promotion of the good life are those in which the general line of growth is definitely known and where the resources of character and intelligence set free are 'greater beyond all question than the encroachment' involved. That means that 'when... we enforce an act (or omission) by law, we should be prepared to say, granting that this act which might conceivably have come to be done from a sense of duty now may come to be done for the most part from a fear of punishment, or from a mechanical tendency to submit to external rules (attended by the practical inconveniences of insensibility, half-heartedness, and evasion which attach to acts so enforced), still so much depends, for the higher life of the people, upon the external conditions at stake, that we think it worthwhile to enforce the act (or omission) though our eyes are fully open to the risk of extended automatism *(5: 170-80)*.' The key to the whole principle lies in the distinction between compulsion and spontaneous growth. Bosanquet does not contrast self-help with co-operation, but will with automatism.

'That the action of the State, being confined to externals, cannot directly promote its spiritual end, does not mean... administrative nihilism (*5: p.XXXVI*).' It means only that there should be a definite struggle for a better life among individuals and groups of individuals before the State can be expected to act. In other words, pure social effort and invention should precede State action. Otherwise, 'the good house (for instance) will not be an element in a better life and the encroachment on ground of volition will have been made without compensation'. The work of the State, therefore, can be described as one of 'taking over' or of 'endorsement', rather than one of direct action. The State is to protect, to encourage, to organise, but not to promote the good life directly. This is one of the reasons why we place the State above all other institutions and give it the power to keep them in their proper places. Our social, political, economic, and religious organisations are the laboratories in which to try experiments in better life. It is only after preliminary experimentation and success in setting up a public conscience in favour of this or that undertaking that we can look to the State for aid. It is only then that we realise a good life. If the State precedes our efforts, what we often get is

paternalism and not communalism (or social effort).

Criticism:

This view of State action seems to exaggerate the distinction between law and morality. While much of morality undoubtedly falls outside the sphere of law, the extent to which moral duties are covered by law is not sufficiently realised. The criminal law, for example, exerts moral influence over a wide area. All civilised States condemn cruelty to animals; it is wrong and therefore the State penalises it. In this case the State tries to enforce morality directly, and in a right way. At the same time, there is a sphere of law, the bearing of which upon morality is so indirect that we can ignore it.

'Hindrance of hindrances' to the good life seems to be a roundabout and artificial way of explaining a simple fact. The ordinary man would say for instance, that under modern conditions primary education is a universal necessity and that, therefore, the State should provide it. But when he is told that illiteracy is hindrance to good life and that free education is a second hindrance placed by the State in order to remove the first hindrance, he would consider it an artificial and pedantic explanation. The idealist places undue emphasis on the negative character of State action. The State, we believe should undertake both negative and positive measures, taking care, of course, not to deaden spontaneity in its individual members. Provision of free education, for example, is a measure more positive than negative. Green and Bosanquet are mistaken in assuming that every positive measure will lead to automatism and the weakening of character. That will depend, at least partly, upon time, place, and circumstance.

Moreover, this theory of State action is open to the danger that the State might wait too long before taking any effective step to 'hinder hindrances to good life'. If the State were to stand aside as a detached observer, letting us struggle for the good life as best we might, it might easily fall into a lethargy from which it would be difficult to rouse it. Bosanquet's answer to this criticism would be that the State not a disinterested onlooker, but is something like 'an eagle that stirreth up her nest and fluttereth over her young', (*Deuteronomy. Ch. 33, verse 11*) not with a view to letting the young ones perish, but in order to teach them a lesson in independence of character. Bosanquet further says that so long as 'law can be altered by constitutional process', it is futile to think that the State can remain insensitive to our cries.

A further objection which may be raised is that 'the idealist is so

concerned with the spiritual foundation of society in the human conscience, so occupied with the inward man and the autonomy of his free-will, that he is blind to the need of reform of material conditions'. In reply to this objection, it may be said that the ideal and the actual, the spiritual and the material, are not locked up in separate compartments, but are correlated. However true this may be in theory, in practice the correlation is not always clear.

Finally the formula 'hindrance of hindrances to good life' is so indefinite and vague that it is capable of being used both by the individualist and socialist to support their respective theories of State action.

In spite of these limitations, the idealistic theory is sound in insisting that whatever the State may or may not do, it should not interfere with the free or disinterested performance of moral acts.

4. Gandhian Economy

The Gandhian economy includes aspects of individualism, socialism, and idealism. It seeks to apply the principle of non-violence to man's economic life. It sees clearly that large-scale mechanised production leads to materialism of the worst type, to the conquest of the backward countries of the world from which raw materials may be imported and to which finished goods may be exported, to war, militarism, and imperialism.

Over against capitalism which emphasises material value, the Gandhian economy emphasises humanitarian and cultural values. It sets its face resolutely against all forms of exploitation, whether this exploitation is from within the country—of one class by another —or from outside. As against standardised production, it seeks to establish a system in which the initiative and originality of the individual will be given the freest scope in which to operate.

The keywords of Gandhian economy are self-sufficiency, decentralised production, and equitable distribution. Under this system large-scale production by impersonal agencies will disappear except as regards goods and services which cannot very well be left in the hands of private individuals. The postal and telegraph systems, roads and other means of communication will continue to be owned and controlled by the State. Railways, mines, forests, irrigation, and the management of heavy industries will be the monopoly of the State. But primary commodities such as food, clothing, and shelter

will be produced on a decentralised basis, the Government providing the necessary means by which goods produced will be properly co-ordinated and marketed. The middleman's profit as well as the profit of the industrial magnate and of impersonal companies will disappear. The primary producer will receive a reward which will be much more equitable than is possible at present. Goods locally produced will, for the most part, be locally consumed. In certain situations, barter economy may replace money economy. Taxes, for example, may in some cases be paid in kind.

International trade will be on a much reduced scale, except as regards surplus goods. Commodities which are necessary for the health and well-being of the people will not be shipped out of the country as at present. But such restriction will cut the ground under militarism and warfare. Each country and each natural region within the country will become a logical unit by itself. It will not be possible for any country to make itself rich by riding on the backs of others.

The gulf between the rich and the poor will become less and less marked, there being no opportunity for the exploitation of one individual or class by another individual or class.

It is true that this system calls for extended State action. But it is not the same as socialism. For, while socialism believes in controlled distribution of wealth, the system under consideration advocates an automatic distribution of wealth by carefully decided policies at the source. Besides, while both capitalism and socialism stress material values, this system regards material values as of significance only in relation to human values.

When we look at Gandhian economy critically, we are bound to say that it is not distinctive enough to be regarded as an alternative to capitalism or communism. One of its chief defects is the assumption that men work only out of profit motive—an assumption which becomes all the more difficult to understand when we remember that in the political field the Gandhian philosophy called for rare self-sacrifice and utter devotion to a cause. Both socialism and communism believe that in inducing people to work we can appeal to higher motives than mere profit motive, such as the motive of good citizenship.

While the decentralised programme of Gandhian economy is a step in the right direction, it is possible to overdo it. There are many advantages to be derived from concerted production. Therefore, the system which we require is one which develops centralisation and

decentralisation *pari passu*. With special reference to India, it must be said that a programme of decentralisation may accentuate aur inherent inability to unite, making us still more individualistic thon we are to-day.

In the interdependent world in which we live and which promises to become more and more of a single economic unit, a programme of decentralisation has its obvious dangers. It will make international trade and commerce and international intercourse difficult, if not impossible. What the world requires today is some form of world planning of which national, provincial, and village planning are a part. Over-emphasis on cottage industries is likely to arrest our economic development and keep things at a primitive level. Hand-made goods will consume more time and energy than machine-made goods and are likely to be more expensive.

The Gandhian economy admits that in every system there is bound to be some discipline or coercion. But it is difficult to uphold its contention that under it there will be voluntary discipline, while under other systems the discipline imposed will be involuntary or compulsory. The line between justifiable and unjustifiable coercion is not easy to draw.

In spite of these difficulties, the Gandhian economy offers a valuable programme in the present state of affairs prevalent in India. The part of wisdom is to make decentralized village economy an intrinsic part of a mixed economy which borrows features of value from different systems and adopts them to Indian tradition and genius.

General Welfare.—This view underlies the actual operation of government in most modern States. It is practical and concrete and is capable of easy adaptation to varying circumstances. The strength of this view is due chiefly to the fact that the modern temper is distinctly against purely theoretical arguments and is in favour of practical results. Liberty is no longer regarded as freedom from law, nor is individual freedom measured by the narrowness of the range of State functions. The eighteenth century doctrine of the inherent and inalienable rights of man is practically dead and the emphasis is on social welfare. Utilitarian and opportunistic considerations play a conspicuous part in determining the functions of the State. Care is taken to keep in view from a utilitarian standpoint the best interests of the individual and of society. Thus, we find that Jermy Benthem, the founder of Utilitarianism enquired into the practical utility of all

institutions and laws before he could justify their existence.

Advocates of this view rightly claim that no hard and fast line can be drawn between legitimate and illegitimate State action. Whether the State ought or ought not to interfere in any situation must be decided on by the merits of each case. Certain general principles, however, may be laid down governing State action.

(1) Does the proposed action make for the common good ?

(2) Is it likely to be effective ?

(3) Can it be done without doing more harm than good ?

Garner's Views. With general welfare as his guiding principle, Garner draws up his view of State action in the following terms: Police duty is not the sole mission of the State. The State ought to do more for its citizens than merely prevent them from robbing or murdering one another. It should contribute to the perfection of the national life, to the development of the nation's wealth and well-being, to its morality and its intelligence. It should secure for every man as effectively as possible those essentials of rational humane living which are really each one's right. It should encourage literature, art and science. It should, in general, be an instrument of social and economic progress. It ought to intervene and protect society against the evils of private monopoly. The presumption in general, however, is against State interference. Freedom should be the rule and interference the exception. The States hould not ordinarily undertake to do for society what the individuals themselves can do as well, or better. Interference should be made, not on any special or doubtful grounds, but only when it can be clearly made out that it will be productive of public advantage. The policy of *laissez faire* is impossible today, much more so now than in the eighteenth and nineteenth centuries. Liberty is not the end of all human associations. It is merely a means for the realisation of the fullness of individual life.

MacIver's View (55 : Ch.5). His view, which is tinged with pluralism, is that the sphere of State action should be determined by what the State *can* do as *an* organ (but not *the* organ of the community). The question for him is not what the State should or should not do but what the state is permitted to do by other social organisations and by the limited nature of the State itself. The practical working of this view, however, results in much the same conclusions as those of the general welfare theory. The positive and negative tasks of the State, says MacIver, are to establish order and to respect personality. To begin with, the State should not seek to control

opinion, *no matter what the opinion may be* (*55 : 150*), although there are some exceptions.

(1) Incitement to break the laws of the State or to defy its authority should be taken cognisance of by the State. Citizens may properly criticise existing laws. They may use peaceful persuasion to convince others and employ all constitutional methods in bringing about the desired change. But law-breaking cannot be tolerated. All this does not mean, however, that the State ought to punish every offender who preaches disloyalty.

(2) 'Like considerations apply to literature which clearly instigates to such immoral acts *as are at the same time prohibited by law* (*55 : Ch. 5*).' Care should be taken to see that the instigation is direct, and not constructive.

(3) Freedom to express opinion does not mean freedom to express libellous or defamatory opinion or publish comments on a case which is *sub judice*.

1. Law and Morality

MacIver agrees with the idealists in holding that it is necessary to separate the inner sanction of morality from political law. Law cannot prescribe morality. It can prescribe only external actions. It should prescribe only those actions whose mere fulfilment, *from whatever motive*, the State adjudges to be conducive to welfare—such actions as tend to promote the physical and social conditions requisite for the expression and development of free—or moral—personality. To turn all moral obligations into legal obligations would be to destroy morality. 'Puritanic' legislation stands self-condemned because it claims that its own morals should be those of all, even to the point of destroying all moral spontaneity that is not its own. 'The ethical appeal is always to the individual's own sense of what is right and wrong, in the last resort always to *his* sense of what is good and evil (*55 : 155*).' Morality has for its basis the fact of choice. It is inward. It comprehends the unity of personality. The sphere of morality, therefore, can never be coincident with the sphere of political law.

Although law differs from morality, the citizen has a moral responsibility towards political law. He ought to obey it as a general rule. In MacIver's words : 'We obey the law not necessarily because we think that the law is right but because we think it right to obey the law. Otherwise the obedience of every minority would rest on compulsion, and there would be so much friction in the State that its

working would be fatally embarrassed. Political obligation is based on the general recognition of the universal service of law and government, for the sake of which we accept specific enactments which in themselves we disapprove (*55 : 156*).'

If morality cannot be enforced directly by law much less can religion. The church ought not to appeal to the State to coerce those whom the church itself cannot persuade. To do so means to mistrust its own moral powers.

2. Law and Religion

Customs are the 'enforced natural growths which reveal the underlying conditions of belief and mode of life (*55 : 160*).' A State cannot legislate away the rooted customs of its citizens. Conflicts between law and customs are more likely to arise in democracies than in autocracies. Democracies are less homogeneous and more unstable in respect to custom. Therefore they are ready to abrogate customs practised by minority groups. But experience shows, as in the case of Prohibition in the United States, that the custom of minorities stubbornly resists the coercion of law. 'Custom, when attacked, attacks laws in turn; attacks not only the particular law which opposes it, but, what is more vital, the spirit of law-abidingness, the unity of the general will (*55 : 161*).' 'Dangerous customs may have to be rooted out by legislation. But such instances show at least that the main body of social customs is beyond the range of law and is neither made nor unmade by the State (*55 : 161*).'

3. Law and Customs

'Over that minor and changeful form of custom called fashion the State has even less control (*55 : 161*).' 'Here we have a curious illustration of the limitations of the state. A people will follow eagerly the dictates of fashion proclaimed by some unknown coterie in Paris or London or New York, but were the State to decree changes in themselves so insignificant, it would be regarded as monstrous tyranny—it might even lead to revolution (*55 : 161*).'

4. Law and Fashion

'In general the whole of that living culture which is the expression of the spirit of a people or of an age is beyond the competence of the State. The State reflects it, and does little more. The State orders life, but does not create it. Culture is the work of community, sustained by inner forces far more potent than political law (*55 : 161-2*).' Art, literature, and music do not come directly within the purview

5. Law and Culture

of the State. In all these activities, 'a people or a civilisation goes its own way, responsive to influences and conditions for the most part unknown to itself, and where known for the most part uncomprehended and uncontrolled by the State (*55 : 162*)'.

6. State and War

The State 'has the power of life and death over all associations no less than over persons—because of its unabated right to make war and peace'. It 'claims the right to settle political disputes by force. In so doing it elevates political interests to complete supremacy over all other interests'. In declaring war the State puts a particular political object above the general ends of the family, of the cultural life, and of the economic order. MacIver believes that this absolute power of the State should be limited, because it is, according to him, a limited organisation and cannot be identified with the nation or the whole community.

The conclusion to which MacIver is driven on the whole question of State action is that, in general terms, the business of the State includes those external conditions of social living which are of universal concern in view of the acknowledged objects of human desire. In particular, it means the preservation of *order* 'for the sake of *protection* and of *conservation* and *development* (*55 : 185*).' Order for its own sake is futile. It is justified only to the extent to which it serves the needs of the community and it is limited by the ideals of the community, particularly by the ideals of justice and liberty.

In practical terms, the functions of the modern State include all those activities which the State can pursue more efficiently and thoroughly than can individuals or private organisations. It includes protection of the weak, establishment of a minimum standard of living, maintenance of the minimum conditions necessary for healthy and decent living, vast works of constructive enterprise whose benefits will be shared by future generations such as town planning and town building, preservation of the countryside, of the beauties of the forest and lake and mountain, fruitful experiments in irrigation, utilisation of the soil, breeding of plants and animals, control of insect pests, etc.; promotion of the establishment of industries by mutual aid, control over currency, credit, etc.; encouragement of industry, trade and commerce; conservation and development of human capacities, education, and general promotion of the cultural life. In undertaking all these activities the State should take care not to repress the inner springs of conduct.

6. Classification of Governmental Functions.

Several writers have attempted a classification of governmental functions on the basis largely of what actually prevails in most modern States. These functions are divided into:

(1) Essential or fundamental, and

(2) Optional or ministrant.

1. Essential Functions

These include functions which are necessary for the continued existence of the State for the guaranteeing of the civil and political liberty of the individual, and for the protection of his life, liberty and property against other individuals. They are determined, in other words, by the threefold relations of State to State, of State to citizen, and of citizen to citizen (*24:364*). Woodrow Wilson (*39:613-14*) sums up the essential functions as follows:

(1) The keeping of order and the providing for protection of persons and property from violence and robbery.

(2) The fixing of the legal relations between man and wife and between parents and children.

(3) The regulation of the holding, transmission and interchange of property, and the determination of its liabilities for debt or for crime.

(4) The determination of contract rights between individuals.

(5) The definition and punishment of crime.

(6) The administration of justice in civil cases.

(7) The determination of the political duties, privileges, and relations of citizens.

(8) Dealings of the State with foreign powers; the preservation of the State from external danger or encroachment and the advancement of its international interests.

While approving of the above classification, Gettell holds that there are two branches of administration—financial and military—which call for special attention. Under the financial functions he includes the imposition of taxation, the regulation of tariffs, liquor, coinage and currency, and administration of public property, such as public lands and forests, public buildings, and munitions of war and of State monopolies such as post offices and, in some States, of railways and telegraphs. The management of the public debt is an allied function.

Military functions include the maintenance of an army, a navy, and an air force. 'Ordinarily both armies and navies are considered

safeguards of peace rather than direct challenges to war; armies being used to maintain internal order, and navies to protect commerce and colonies (*24:400-1*)'. In all the leading States a very large proportion of the national income is spent on the army and navy. Even in the United States, where the danger of war in the '30's was comparatively remote, three-fourths of the expenditure of the federal government was used for army, navy and pensions.

2. Optional Functions

These are functions which are considered to be non-essential for the existence of the State or for the maintenance of individual liberty and security. Yet they are generally undertaken by most States as being necessary for the promotion of general welfare. The line between essential and optional functions is not easy to draw and the two merge into each other. The classification is bound to vary from time to time and from place to place.

Optional functions are divisible into socialistic and non-socialistic functions. Socialistic functions are those which can be left to private enterprise, but which are usually undertaken by the State in order to avoid the evils of private control or on account of the greater efficiency of governmental agencies in certain tried fields. Examples of such functions are the ownership and management of railways and telegraphs in some States and the municipal control of water, gas, and electricity.

Non-socialistic functions are those which, if not undertaken by the State, are not likely to be undertaken at all. 'Under this head come care of the poor and incapable, maintenance of public parks and libraries, sanitation, certain forms of education, and the large amount of investigating and statistical work the purpose of which is to improve the environment and give information by which further improvement may be made (*24:396*)'.

Woodrow Wilson sums up the optional or ministrant functions under the following heads:

'(1) The regulation of trade and industry.

'(2) The regulation of labour.

'(3) The maintenance of thoroughfares—including State management of railways and that great group of undertakings which we embrace within the comprehensive term internal improvements.

'(4) The maintenance of postal and telegraph systems, which is very similar in principle to (3).

'(5) The manufacture and distribution of gas, the maintenance of water works, etc.

'(6) Sanitation, including the regulation of trades for sanitary purposes.

'(7) Education.

'(8) Care of the poor and incapable.

'(9) Care and cultivation of forests and like matters, such as the stocking of rivers with fish.

'(10) Sumptuary laws, such as "prohibition" laws (*28*: *433*)'.

SOCIAL LEGISLATION IN INDIA

Before we close the chapter, it may be of some interest to the student to see how his theory of State action can be applied in a practical manner, say in the field of social reform. What part the government of a country should play in the initiation of social reform is a keenly controversial subject. Whatever be our social and economic theories, it is admitted on all hands that the State can no longer be regarded as a magnified policeman whose business is merely to give protection against internal and external enemies. The State has no *raison d'etre* in our present-day world if it does not rapidly become a social welfare State, taking care at the same time not to hamper individual and group initiative and self-help.

Where the harm done to society is direct and definite and is on a large scale, where the remedy proposed is not worse than the disease, and where the methods of enforcement used are not too expensive and are not likely to bring the government into disrepute, government should take the lead, even if it means running counter to public opinion. If government had waited till public opinion was educated before it abolished *sati* and infanticide, it would have waited indefinitely. It is foolish to wait till the masses of India are educated before urgent social reforms are enacted in such matters as public health, sanitation, and nutrition.

Those who oppose positive legislation by the State fail to recognise the fact that legislation itself is an instrument of public opinion. Just as the policemen's club serves to keep even the best of us in the straight and narrow path, legislation by the State can help us to reach high levels of social living at which we are not disposed to live in our ordinary moments. While legislation should take care not to be too far in advance of public opinion as a general rule, it should be somewhat in advance of public opinion so that it can act as a lever in raising public opinion to a higher level.

Legislation in the social field, in order to be effective, need not be of compulsory character in every case, nor need it be applied to the whole country or to the whole population all at once. There are many cases where permissive legislation can be much more effective than compulsory legislation. A case in point is that of intercaste marriages.

In our present-day society there are a few progressive individuals who are willing to transcend barriers of caste in choosing their life partners. Such individuals should be indirectly encouraged by the State by removing whatever legal disabilities there may be in the way. Indirect methods of attack in many cases of social reform are far more effective than direct methods.

Prohibition of liquor in selected areas, as is the case in India today, is indeed a wise step. It is fortunate that on this question almost all the religious communities of India see eye to eye with each other. There is no justification for the present position of excluding military personnel from the operation of the law.

Prohibition has undoubtedly cut into state revenues and has possibly thrown hundreds of people out of employment. Illicit manufacture of liquor and smuggling are prevalent. Law-enforcement officers have not always been faithful in the performance of their duties.

Yet prohibition can succeed if the people are determined to have a drink-free country. Temperance education at home, school and church can help to reach this end. A vast public works programme is necessary to help those thrown out of employment by the law. Alternative sources of revenue for the State governments need be discovered.

A negative measure such as prohibition is of no avail unless it is accompanied by positive measures. As soon as prohibition was introduced in the district of Salem by the first Congress Ministry (1937-39), it was found that many toddy tappers were thrown out of work and that many a man was deprived of the only means he had of enjoying himself. This meant that the government of the day had to organise the leisure hours of the working classes and find employment for those without work. Sporting activities, *bhajanas* and tea shops were introduced. Toddy tappers were trained to manufacture *gur* out of unfermented toddy and many were employed in stone-breaking for the making of public roads. The loss to the provincial revenue was sought to be made good by a tax on sales.

Social experimentation can successfully be made not only in limited areas, as in the case of prohibition, but also with regard to certain classes of the population. A case in point is that of child marriage. It is an open secret that the Child Marriage Restraint Act of 1929 (popularly known as the Sarda Marriage Act) has been respected more in its breach than in its observance, because of the fact that neither the Hindu nor, to a large extent, the Muslim religious and

social customs were in favour of it. It is, however, possible to apply it to village Christians among whom child marriages are not unknown. In view of the fact that Christians everywhere frown upon child marriage, to exercise compulsion in the case of village Christians is not likely to rouse any serious opposition. When the experiment succeeds among them and the people around see the good results of it in the form of better health, stronger bodies, and longevity of life that will serve as a striking object lesson to the on-lookers.

Since the attainment of political freedom the Government of India has given notice of its determination to enforce the Sarda Marriage Act. Whether it will really do it and succeed in doing it remains to be seen.

In giving relief to classes of people who are handicapped, the responsibility of the State is immense, and yet very little has been done in this direction in India. It is true that there are State-managed hospitals and institutions for the care of the insane. But little or nothing is being done for the feeble-minded who swell the ranks of the unemployed and unemployable, for the deaf-mute, the blind, the old and the decrepit. The resources of the people are not vast enough to undertake voluntary relief of these classes. The Indian is proverbially noted for his charitableness but he has not been trained to put this instinct of his to a scientific purpose. Giving alms to the wayside beggar may soothe his conscience and give him the satisfaction that he is earning merit for himself in some future existence. But it seldom occurs to him that indiscriminate alms-giving gives rise to more social problems than it solves.

This leads us to an examination of the part that voluntary efforts should play in the matter of social amelioration. In a country like England where the population is much more homogeneous than in India and where the level of education is high and the gospel of self-help has played an important part in the national life of the people, one finds innumerable societies and clubs seeking to bring about much needed reforms in one direction or other. In that country voluntary organisations have been the laboratories of social experimentation; and when the pioneer work undertaken by them has proved its worth and when later on it becomes too heavy for their slender resources, the State comes along and takes it over. In India, however, the situation is altogether different. Public enlightenment is still at a very low level and a sense of civic responsibility is still in the making.

In spite of all this, it must be said, and said emphatically, that it is

foolish to rely upon Government initiative alone in seeking remedy for our social ills. The home, the school, the college, the press, the pulpit, the cinema, the theatre, the radio, and the sports club should all become active agencies for the removal of social abuses. We have not yet realised the valuable part which posters, cartoons, pageantry, and popular songs can play in making people vividly conscious of the social evils to which they have been meekly submitting themselves through the ages.

We may re-state the above discussion in the form of the following principles and methods of action :

(1) In whatever the State does care should be taken not to destroy individual initiative, responsibility, and self-respect.

(2) Social welfare undertaken by the State or by any voluntary agency should not become too formal and mechanical.

(3) Direct attacks often fail of serious accomplishment. In such cases indirect methods may be more effective.

(4) Social legislation, especially in democratic countries with an educated public, should not be too far in advance of public opinion, although social legislation itself can be an important means of raising the level of public opinion.

(5) As a general rule, voluntary agencies are the laboratories in which social experimentation should first be tried.

(6) Local authorities like municipalities can do much more for the amelioration of the masses than provincial or central governments, since they are more directly in touch with social problems.

NOTE ON APPRECIATION OF SOCIALISM

We are living at a time when socialism is condemned in the most violent terms possible or is praised without qualifications. As scientific students of the subject, it is our duty to examine it sympathetically and separate the ideal of socialism from its practice, and see whether the difficulties which it encounters are intrinsic to the system itself or only incidental. Even if the traditional arguments in favour of socialism all turn out to be false, the spirit of the movement is sound.

It is most unfortunate that even academic students of the subject allow themselves to be influenced by their prejudices and pre-conceived notions in approaching socialism. Thus Roscher, a German economist, says that socialism stands for 'those tendencies which demand a greater regard for the common weal than agrees with human nature'. There can be no doubt that this is a question-begging definition. Who is to be the judge of what agrees with human nature ? 'Human nature being what it is, we cannot do thus and so' is not seldom a lazy man's excuse for inaction. Even a scholarly professor like Hearnshaw lets himself be carried away by his prejudices when he says that the only two classes of people who are really attracted to socialism are cranks and criminals.

Many-sidedness of Socialism. One reason why it is very difficult to attempt an accurate definition of socialism is its many-sidedness. Socialism ranges from schemes of profit-sharing between the employer and the employee or capital and labour to a form of paternalism under which the state is expected to do everything for the individual. 'Socialism', says an unsympathetic contemporary, 'has as many heads as a hydra, and while you are engaged in cutting off one, another springs up in its place'.

The Bible teaches 'where there is no vision, the people perish'. Socialism may be regarded as vision, although its enemies may describe it as visionary. It is a philosophy and a religion—a way of life. Consequently it is not easy to define it academically or lay down in advance a cut-and-dried socialist programme in all its details. It is a living movement, full of tremendous possibilities ; not a ready-made scheme or fixed system which is incapable of adaptation to changing conditions. Socialism aims at the good of all, instead of the good of

the few. It is a continuation of the struggle for political freedom—the next step in democracy. The freedom which we enjoy today in democratic States untouched by Socialism is freedom to starve.

Definition of Socialism. As good a definition of socialism as any is the one by Sellars that it is 'a democratic movement whose purpose is the securing of an economic organisation of society which will give the maximum possible at any one time of justice and liberty'. Hughan defines socialism as 'the political movement of the working classes which aims to abolish exploitation by means of the collective ownership and democratic management of the basic instruments of production and distribution'.

Development of Socialistic Ideas. Socialistic ideas are almost as old as civilised man himself, although the term 'socialism' came into use only during the thirties of the last century. It may indeed be regarded as the joint product of the industrial revolution in the world of economics and the French Revolution in the world of ideas. Up to the middle of the last century socialism was largely Utopian in character. The leading lights of this early type of socialism were More, Owen, Fourier and Saint Simon—all of whom were idealistic and rationalistic and believed in bringing about socialism on a nation-wide scale by means of persuasion and example. They did not attempt a clear distinction between socialism and communism. As a matter of fact, the ideal societies which they all hoped to create were of a communistic nature.

This early form of visionary and Utopiar socialism received a check at the hands of Karl Marx and Engels who gave the movement a popular and, what they called, a scientific basis. Marx was an agitator by nature and had no belief in isolated experiments and powers of persuasion. He made socialism a proletarian movement and gave it a distinctly political turn. He enunciated the idea of class war and repudiated the claims of landlords to rent, the right of capitalists to interest, and the plea of employers for profit. He regarded labour the sole source of economic value.

The present stage is a transition in which socialism is coming into its own. A contest is going on between socialism and individualism on the one hand, and between socialism and communism on the other. It is no longer true to say with some interested people that 'Marx was, and still is, the guiding spirit of modern socialism'.

Socialism and Other Systems. 'Give a dog a bad name and then hang it' is the advice which enemies of socialism have been following

at all times. Socialism is not to be indentified with anarchism, syndicalism, extended bureaucracy or communism, for socialism is essentially evolutionary and realistic in character. The method of anarchism (excluding the philosophical variety) is violent and revolutionary. Anarchism is individualism run mad. People who interpret socialism as an extended bureaucracy do so because they are in the habit of looking upon government as an outside agency. But if, according to the socialistic theory, government is what the people have set up for themselves and is something of which they are an intrinsic part, extended activity of the State cannot very well mean paternalism or bureaucracy.

If socialism is to be understood aright, it should not be confused with communism. While socialism stands for the common ownership of the means of production (and according to some, of distribution) alone, communism stands for common ownership, as well as for enjoyment of, all things. While the communistic ideal is to reward every man according to his need, socialism believes in reward according to effort or socially useful labour. It holds to the method of private income and private property while communism denies its propriety. One is evolutionary and the other revolutionary. Communism is more vague, more sentimental, and more inclined to bureaucracy. Socialism is a friend of the State while communism looks forward to a time when the State will gradually whither away.

Programme of Socialism. The programme of moderate forms of socialism is summed up in the words of a recent writer that socialism stands for a progressive nationalisation of the means of production with a view to a progressive equalisation of incomes. Socialism subordinates private profit to human welfare. It proposes production for use rather than for personal gain or power, and it advocates for all the equalizing of opportunities for self-development.

Socialism is defined in the Encyclopaedia Britannica (11th edition) 'as that policy or theory which aims at securing by the action of the central democratic authority a better distribution and, in due subordination thereto, a better production of wealth than now prevails'. The important measures which socialists propose in securing a better distribution of wealth and greater social control and regulation are (1) the bringing under public ownership and control important industries and vital services ; (2) the regulation of industry by considerations of social needs rather than of private profit ; and (3) the substitution of the social service motive for private profit motive.

Socialism postulates belief in the coming of a new social order based not on fighting but on fraternity, not on the competitive struggle for the means of subsistence but on a deliberately planned co-operation in production and distribution for the benefit of all who participate by hand or brain. Some of the proposals of the Labour Party of England in bringing about this end have been (*i*) the universal enforcement of a national minimum wage; (*ii*) the democratic control of industry, and (*iii*) a revolution in national finance and the employment of surplus wealth for the common good.

Advantages of Socialism. Sellars believes that the following desirable changes can be attained under socialism:

(*i*) Reduction of the disorder characteristic of the present economic system by enforcing a system of group ownership and control wherever possible.

(*ii*) The lessening of waste by drastic reduction in the amount spent on advertisement, the elimination of the huge army of middlemen found to-day, and better co-ordination.

(*iii*) Elimination of anti-social forms of competition.

(*iv*) Abolition of unmerited poverty by elaborate schemes of social security and vocational education and rehabilitation.

(*v*) The tapping of new energies which are now latent by means of vital education and by the increase of opportunities for choice of work.

(*vi*) Making labour-saving devices really saving of labour.

(*vii*) Procuring a fair degree of leisure for everybody and the elimination of social parasites.

(*viii*) The creation of a physically and mentally healthy society.

Socialism, in short, would eventually mean the eradication of unhealthy forms of competition, elimination of the capitalist, and the expropriation of the landlord.

In spite of these and other advantages which may reasonably be expected to follow the advent of socialism, there are certain practical difficulties which it must face before it is entitled to our sympathetic consideration.

Difficulties of Socialism. Critics say that socialism means authoritarianism and bureaucratic control on a very extensive scale. Instead of private business there would be government factories and government stores. Everybody would become a State employee. The amount of supply necessary in each commodity would be fixed by continuous government returns. State officials would assign people to their tasks

and determine the rewards and leisure that each was to enjoy.

While this objection is a forcible one, it must be said in all fairness to democratic socialism that what the people do for themselves cannot be paternalism. It simply testifies to the fact that the government is no longer a semi-caste affair but an instrument which the citizens have at last learned to handle for their own benefit. 'The methods of control which are slowly developing in trade unions and in political institutions will undoubtedly be applied as a check upon any tendency to the overgrowth of officialism'. (Sellars)

Socialism, it is said, preaches class-war. It is selfish, materialistic, and utilitarian. It is a raid of the 'have-nots' upon the 'haves'. In reply to this charge it may be said that class-war is essentially Marxism and not democratic socialism. Instances of the advocacy by socialism today of class-war are to be regarded rather as the platform tactics of the orator to weld the working classes together and to catch votes than as a settled principle. Besides, in the present individualistic order of society there is class-war of a different kind. With some exaggeration it may be described as a raid of the 'haves' upon the 'have-nots.'

Socialism stands for social good or human welfare as against the good of the few.

Under socialism there would be no adequate motive for production. Efficiency of production would decrease because there would be no room for individual initiative, enterprise, and freedom. In reply to this objection, it may be asked whether this is not too low a view of human nature to take. Need self-interest always be the motive power for exerting oneself ? As the social spirit of man increases, is it not possible to appeal more and more to other motives than private gains ? Even today do we not find that, as we advance more and more in the realisation of our social responsibilities, non-material rewards are equally as effective as material ones in spurring men to productive action ? Bertrand Russell holds that the primary thing in man which needs to be satisfied is this 'creative impulse'. Prof. Hocking says much the same thing when he claims that the supreme factor in man which craves satisfaction is 'the will to power' or self-expression. Is not doing the kind of work that fits one or the satisfaction of rendering public service a reward in itself ?

The total output in socialism, it is said, would probably be less. Even if this were true, is it necessarily a calamity ? Why should we be obsessed constantly with the idea of production ? Should we not

now and then turn our attention to a *just* distribution as well ? The problem for the future is one of distribution rather than of production.

Large-scale industry, it is argued, cannot be organised on a state basis because of its sheer magnitude. Even in our present order of society it is not true to say that the larger the business, the more economically it can be run. Our answer is that, in some fields at least, we may substitute with advantage municipalisation for nationalisation. But with the gaining of experience, State management of post-offices and telegraphs can be gradually extended to State control of forests, mines, railways, water-ways, water-power, etc.

Socialism, its critics say, is a process of levelling down. Instead of some who would be rich and others who would be poor, as in our present-day society, under socialism everybody would be uniformly poor and miserable, all becoming members of a 'fraternity of poverty'. In reply to this it may be asked whether it is not possible to argue that socialism means a process of 'levelling up'. Besides socialism does not necessarily discourage ability and talent. But it wishes them to be harnessed to higher ends than to mere private gain. Socialism is optimistic with regard to the possibilities of changing human nature, and such optimism is shared by all great religious and moral systems.

What the individual wants more than wealth is the opportunity for control, and this psychological factor is said to be ignored by socialism. There is genuine satisfaction in doing the kind of work in which one is naturally interested and in doing it in the way that one thinks best. Private property gives one the best chance possible to express one's personality. It is 'concrete immortality'. Our answer to this objection is that it is not convincing enough. Personality can express itself fully in ways other than through control over the lives and destinies of human beings.

The Value of Socialism. The movement for socialism is necessary in every society and in every political group. If socialism does not have a positive value, it at least has a useful negative function to perform.

In many Western lands it has united the working classes and has given them a sense of unity and dignity such as they never had before. They no longer consider themselves chattels or 'living tools'. They insist on a minimum of economic welfare. Rise of wages, reduction of hours of work, improvement of factory conditions ,etc., have all been accomplished by Trade Unionism which may be regarged as the economic wing of socialism.

Socialism holds up standards of personal self-sacrifice and public service. It is partly responsible for the enlightened social conscience and public spirit that we see manifest in many of the advanced countries of the world today.

Socialism points out the influence of environment upon character. It has made people realise that even spiritual development requires a certain material basis. It has forced individualists to breathe into eighteenth century individualism the life-giving principle of equal opportunity to all. Present-day individualism is midway between orthodox individualism, the motto of which is 'sink or swim', and socialism pure and simple.

Socialism draws pointed attention to the fact that the individual is often a victim of circumstances which he himself has not created and over which he has no control.

It demonstrates that political democracy is incomplete without social democracy, *i.e.*, without a spirit of equality and fraternity. In a country like India where there are many unjust privileges and social inequalities and where even people who should know better hanker after titles and honours, the spirit of socialism is likely to be productive of much good.

It has forced upon the attention of the world the urgent need for social justice. In the words of Sir William Harcourt, 'we are all socialists now', because we are all seeking to bring about a certain measure of social justice. 'No state of society can be considered satisfactory or permanently tolerable in which so much poverty and misery exist as at present'. The socialist desires that there be no leisure for anybody, except for adequate services rendered and that no one have superfluity until the minimum needs of every one have been satisfied.

An intelligent, evolutionary, realistic socialism—socialism by stages—is a sound theory. Particular forms of socialism may be wrong, but the spirit of socialism is right.

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10

SOVEREIGNTY AND PLURALISM

1. Definition of Sovereignty

Sovereignty is one of the most important concepts of political science, yet no term has given rise to more discussion and confusion. It is used in a variety of ways which are not clearly distinguished from each other. 'Sovereignty' is derived from the Latin word *superanus* meaning supreme. Sovereignty means that in every full-fledged or independent State there is an ultimate authority, an authority from which there is no appeal. This authority is supreme both in internal and external matters. Internally, no individual or group of individuals has the legal right to act contrary to the decisions of the sovereign power. In external matters, too, the sovereign State is supreme. It is its own master. International agreements and conventions are not legally binding on it.

Definitions of sovereignty are many and varied (*22:159*). Bodin, the first Western writer to develop a systematic doctrine of sovereignty, defines it as 'the supreme power over citizens and subjects; unrestrained by law' Grotius, who wrote half a century later, defines it as 'the supreme political power vested in him whose acts are not subject to any other and whose will cannot be overridden.' It is the 'moral faculty of governing a State.'

Among modern writers, Duguit, a French professor, says that sovereignty as generally understood in his country is the 'commanding power of the State; it is the will of the nation organised in the State; it is the right to give unconditional orders to all individuals in the territory of the State.' Burgess, an American writer, describes it as 'original, absolute, unlimited power over the individual subject and over all associations of subjects.' Elsewhere he calls it 'the underived and independent power to command and compel obedience'. Pollock's definition is: 'Sovereignty is that power which is neither temporary nor delegated, nor subject to particular rules which it cannot alter.' Willoughby says: 'Sovereignty is the supreme will of the State.'

Finally, according to Kranenburg, it is the nature of the State 'to impose its own will unconditionally on others; for such is the definition of ruling and it is of the essence of the State that it should rule (*45: 139*).'

2. Characteristics of Sovereignty

Writers on the traditional doctrine of sovereignty have summed up its attributes under:

(1) absoluteness;
(2) universality;
(3) inalienability;
(4) permanence;
(5) indivisibility.

1. Absoluteness

The sovereign power is said to be absolute and unlimited. There is no power on earth which can bind it. (*a*) Internally, the sovereign power has absolute power over all individuals and groups of individuals within the State. Whatever limitations there may be are self-imposed limitations. Therefore, they can be removed by the State in a legal manner. 'An unchangeable law', in the words of Gettell, 'is a legal impossibility (*24: 94*).' (*b*) Externally, too, the sovereign authority is considered supreme. It is absolutely 'independent of any compulsion or interference on the part of other States (*24: 95*).' Treaties, international understandings and conventions, etc., do not destroy sovereignty, in as much as there is no compelling power behind them. They are valid only to the extent to which the sovereign State chooses to respect them. Heretofore, it has been considered that international courts can only interpret international law; they have no power to enforce it.

The remaining attributes of sovereignty are corollaries of this.

2. Universality or all-comprehensiveness

The sovereign power, as seen already, is supreme over all persons, associations, and things within the State. This does not prevent the State, however, from waiving its right of jurisdiction in certain matters. No person or body of persons can claim exemption as a matter of right. A well-organised world-wide association such as the Free Masons is not superior to any State. It is subject to the laws of individual States.

The only apparent exception to the universality of sovereignty, as pointed out by Gilchrist, is what is known as the extra-territorial sovereignty of diplomatic representatives in certain countries. Gilchrist

explains this fact as follows : 'An embassy in a country belongs to the country it represents, the members of the embassy being subject to the law of their own country. This, however, is only a matter of international courtesy and is no real exception. Any state in virtue of its sovereignty could deny the privileges so granted (*28 : 110*).'

3. Inalienability

If sovereignty is absolute and unlimited, it stands to reason that it be inalienable. A sovereign State cannot give away any of its essential elements without destroying itself. An American writer, Lieber, says : 'Sovereignty can no more be alienated than a tree can alienate its right to sprout or a man can transfer his life and personality without self-destruction.' A State may cede part of its territory to another State. By so doing it surrenders its sovereign rights over that particular territory without destroying its sovereignty as such. There are two sovereign authorities thereafter, exercising control over two distinct territories. Likewise, the abdication of a monarch or sovereign does not mean the alienation of sovereignty. 'It is merely a change in the form of government by the resignation of his position by a titular sovereign (*28 : 111*).'

Rousseau, who upheld the inalienability of sovereignty claimed that power could be transferred, but not will. Sovereignty is the essence of the personality of the State and to alienate it is equivalent to state suicide.

4. Permanence or perpetuity

Sovereignty is as permanent as the State itself. So long as the State lasts sovereignty lasts. The two are inseparable. The death or dispossession of a king or president does not mean the cessation of sovereignty. Sovereignty shifts immediately to the next bearer. 'It is only a personal change in the government, not a break in the continuity of the State (*28 : 111*).'

5. Indivisibility

The indivisibility of sovereignty is a logical deduction from its absoluteness. Thus Gettell writes : 'If sovereignty is not absolute, no state exists ; if sovereignty is divided, more than one state exists (*24 : 95*).' Certain pluralists attack this point of view. They would divide sovereignty between the State and other groups or associations within the State ministering to the different interests of man. If this teaching should be put into practice, it would eventually mean the disintegration of the State. Even those who are not pluralists have at times advocated a theory of divided sovereignty, especially in

relation to federal States. A. L. Lowell, a former President of Harvard, emphatically asserts that 'there can exist within the same territory two sovereigns issuing commands to the same subjects touching different matters (*22 : 175*).' Likewise, Lord Bryce claims that legal sovereignty can be 'divided between two co-ordinate authorities (*22 : 175*).' These writers probably have in mind a case like that of the United States in which the Supreme Court maintained that the United State is sovereign as regards the powers conferred on the national government and the States are sovereign as regards those reserved to them. Calhoun and many other eminent thinkers who adopt a different point of view interpret conditions in America to mean that sovereignty which is an indivisible unit expresses itself through the national government in certain matters and through the State governments in certain others. In other words, sovereign authority is not divided between the federal and State governments but rests with the power back of both which has the competency to determine the powers of both, 'and which can redistribute these powers between them in such a way as to enlarge or curtail the sphere of either (*22 : 178*).'

To sum up the discussion in the forcible words of Calhoun : 'Sovereignty is an entire thing : to divide it is to destroy it. It is the supreme power in a state, and we might just as well speak of half a square or half a triangle as of half a sovereignty (*22 : 173*).' Or, again, 'there in no difficulty in understanding how *powers* appertaining to sovereignty may be divided and the exercise of one portion be delegated to one set of agents and another portion to another, or how sovereignty may be vested in one man, in a few, or in many. But how *sovereignty* itself, the supreme power can be divided..it is impossible to conceive (*22 : 177*).'

3. Different Meanings of Sovereignty

The term sovereignty is used in different senses, and failure to distinguish them results in much confusion. The term 'titular sovereignty' is used with reference to a king or other monarchial ruler who at one time was a real sovereign, but who for a long time has ceased to be such.

1. Legal Sovereignty

The king of England is officially referred to as the 'sovereign' although his sovereignty is only nominal. Real power passed to other hands long ago. Therefore, the sovereignty of the king is a harmless fiction.

A distinction is often made between legal sovereignty and political sovereignty. The legal sovereign is the supreme law-making body in the State. Only its commands are laws. It can override prescriptions of the divine law, principles of morality, and dictates of public opinion. Such a sovereign is found in England in the King-in-Parliament. The Parliament, according to Dicey, is 'so omnipotent, legally speaking...... that it can adjudge an infant of full age, it may attain a man of treason after death; it may legitimise an illegitimate child, or, if it sees fit, make a man a judge in his own case (*22 : 163*).' Legal sovereignty is the lawyer's conception of sovereignty. It is 'the determinate person' referred to in Austin's definition of sovereignty.

2. Legal Sovereignty

3. Political Sovereignty

This term is not so easy to define. In a democratic country, while the legal sovereign is the supreme law-making and law-enforcing body, there is behind it the will of the people which is the ultimate and final source of all authority. It is the authority from whose verdict there can be no appeal. In the words of Dicey, 'Behind the sovereign which the lawyer recognises there is another sovereign to whom the legal sovereign must bow'. To quote the same authority again: 'that body is politically sovereign, the will of which is ultimately obeyed by the citizens of the state (*15 : 66*)'.

Much confusion arises when we attempt an exact definition of the term 'political sovereignty'. It is vague and indeterminate. It is not something which can be located with exactness. In a country in which direct or pure democracy prevails, legal and political sovereignty are almost coincident. But most countries where democracy prevails are of the representative or indirect type. Therefore, legal sovereignty and political sovereignty are different. Some writers identify political sovereignty with the collective community, some with the mass of the people, some with the general will, some with public opinion, some with the physical power of that part of the people who can bring about a successful revolution. Each one of these points of view contains an element of truth and it is impossible to say that any one of them is entirely sound as against the rest. Owing to this confusion some writers prefer to confine 'sovereignty' to its legal meaning and abandon the conception of political sovereignty altogether. Thus, Gettell observes: 'Any attempt ..to find a 'political sovereign' back of the legal sovereign destroys the value of the entire concept and reduces sovereignty to a mere catalogue of influences (*24 : 98*).' Likewise,

Leacock writes: 'The moment one passes from the dry certainty of the Austinian conception of legality, all is confusion (*51 : 61*).' One thing that is clear, however, is that the only sovereignty that the lawyer and the judge can recognise is that of the legal sovereignty. Public opinion, general will, wishes of the electorate, possibilities of revolution, etc., all affect the decisions of the legal sovereign. But they are neither definite nor organised as is the legal sovereign. A well-ordered State requires the supremacy of the legal sovereign to which habitual obedience is rendered by the bulk of the citizens. It should provide at the same time for the freest scope possible for the bringing about by constitutional methods of the change desired by the people.

4. Popular Sovereignty

From political sovereignty to popular sovereignty there is a natural transition. According to the doctrine of popular sovereignty, ultimate authority rests with the people. This doctrine was enunciated in the Middle Ages by such writers as Marsiglio of Padua and William of Ockam. In the eighteenth century it became the corner-stone of the teaching of Rousseau, who proclaimed it 'as with a trumpet blast (*22 : 164*).' The doctrine received further impetus in the nineteenth century with the growth of democracy, so much so that, in all self-governing countries, it is taken for granted that the people are the ultimate custodians of political authority. The legal sovereign cannot last long if it deliberately and continuously opposes the wishes of the people, for the people in the last resort can have recourse to force and establish a new government by means of revolution. Phrases like 'popular control' and 'popular government' which are often used as synonyms for democracy show the extent to which the people as a whole are the ultimate check on the legal sovereign.

While the doctrine of popular sovereignty is a very attractive doctrine and satisfies the vanity of the people, difficulty arises when we attempt to analyse the concept and give it a precise meaning. The more we ponder over it, the more difficult it is to define it. It is open to all the criticisms to which the conception of political sovereignty is exposed. The two possible meanings that can be given to the term 'people' in defining popular sovereignty are (*a*) 'the total unorganised indeterminate mass', (*b*) the electorate. People, as understood in the first sense, cannot obviously be the sovereign. As regards the second, people can act only through legal channels if they are to be regarded as sovereign in any sense at all. In the words of Garner, 'Un-organised public opinion, however powerful, is not sovereignty unless it is

clothed in legal form, no more so than the informal or unofficial resolution of the members of a legislative body is law (*22 : 165*).' In actual practice, popular sovereignty seems to mean nothing more than public opinion in time of peace and the might of revolution 'in the case of a conflict (*24 : 100*).'

Interpreted in the above manner, there is little to distinguish popular sovereignty from political sovereignty. Gilchrist, who insists on the distinction, holds that popular sovereignty is practically equivalent to political liberty or 'popular control'. It means the power of the masses as against the power of an individual ruler or of a class, It implies universal suffrage, control of the legislature by the representatives of the people, and the control of the nation's finances by the popularly-elected House.

Whatever difficulties we may encounter in defining 'popular sovereignty', the doctrine contains several valuable ideas :

(*a*) Government does not exists for its own good. It exists for the good of the people.

(*b*) If people's wishes are deliberately violated, there is the possibility of revolution.

(*c*) Easy means should be provided for a legal way of expressing public opinion.

(*d*) Government should be held directly responsible to the people through such means as frequent elections, local self-government, referendum, initiative, and recall.

(*e*) Government should exercise its authority directly in accordance with the laws of the land and not act arbitrarily.

5. De jure and de facto Sovereignty

Sovereignty being a question of fact, a distinction is sometimes made between *de jure* and *de facto* sovereignty. The *de jure* sovereign is the legal sovereign and the *de facto* sovereign is the actual sovereign—a sovereign which is actually obeyed by the people whether it has a legal status or not. *De facto* sovereignty may rest purely on physical force or religious influence, while *de jure* sovereignty has the legal right to command obedience. The distinction between the two comes out sharply in times of revolution. Some revolutions mean a mere change in the personnel or organisation of government, while others result in a complete destruction of the old legal sovereign and the establishment of a new one. It is a mistake to regard *de facto* sovereignty as 'unlawful' or 'illegal', for the essence of sovereignty lies in its power to compel obedience. Interests of internal peace and order

in any country demand that the *de facto* and *de jure* sovereign should coincide and that when a clash arises between the two it should not last long. In other words, might and right should go together. A *de facto* sovereign, as soon as it establishes itself permanently, begins to acquire a legal status and eventually becomes the *de jure* sovereign.

4. LOCATION OF SOVEREIGNTY

One of the most difficult questions to answer for a student of political science pertains to the location of sovereignty in the State. There is diversity of opinion among reputed thinkers on this question. Gettell notes that among these thinkers sovereignty is located respectively in:

'(1) The people of the State.

'(2) The organisation which has a legal right to make or amend the constitution of the State.

'(3) The sum total of the legal law-making bodies in the government of the State *(24 : 98)*.'

The first of these views need not detain us long. In dealing earlier with the conception of popular sovereignty, we have mentioned the several criticisms to which it is open. The other two views, however, cannot be so easily dismissed. Difficulty in locating sovereignty is not a serious question so far as the United Kingdom is concerned, where no distinction is made between constitutional law and statute law. The English constitution is flexible and is not hemmed on all sides, as is the American constitution. In the United Kingdom, legally speaking, the Parliament including the King, Lords and Commons is supreme. It can make and unmake any laws. It is, therefore, described as the legal sovereign. The political sovereign is the people as a whole, or, strictly speaking, the electorate.

In France, neither the President nor the Chamber of Deputies nor the Senate has the legal competency to change the constitution. But the Senate and the Chamber of Deputies in a joint session are entitled to doso. Hence legal sovereignty may be regarded as resting in this joint body.

In the United States, owing to its rigid constitution, it is not so easy to locate sovereignty. Neither the President nor the legislatures, federal or State, enjoy absolute legal powers. Every act of theirs which goes beyond the limits of the constitution can be questioned by the appropriate courts. Sovereignty, therefore, is not vested in them but rests in that body which is legally entitled to change the consti-

tution. This body is described by the constitution of the United States, Article 5, in the following words : 'The Congress, whenever two-thirds of both Houses shall deem it necessary shall propose amendments to this constitution, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments which in either case shall be valid to all intents and purposes, as part of this constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof as the one or the other mode of ratification may be proposed by Congress'.

Gettell and a few others writers take exception to the point of view which regards legal sovereignty as vested in that body which can make and amend the constitution. Their chief argument is that 'the constitution-making organs act intermittently and at infrequent intervals, in some cases never', while the sovereignty of the State must be constantly exercised. They, therefore, locate sovereignty in 'the sum total of all law-making bodies in the government', including (*24 : 102*) :

'(1) *Legislature*—National, commonwealth, or local.

'(2) *Courts*—In so far as they create law, not when merely interpreting or applying law.

'(3) *Executive officials*–In so far as they create law, by ordinances, proclamations, etc.

'(4) *Conventions*—When acting legally as law-making bodies, as in the case of a constitutional convention properly assembled.

'(5) *Electorate*—When exercising powers of referendum or of plebiscite (*24 : 103*).'

According to this view, then, sovereignty includes 'all the organs of government except those that are purely administrative (*24 : 103*).' Its chief merit, according to Gettell, is that it makes no distinction between constitutional law and Statute law or between the various parts of government. Besides, 'like the popular sovereignty theory, it recognises that, in modern democratic States sovereign powers are widely distributed and exercised by large numbers of the State's citizens. Like the constitution-making theory, it recognises that sovereignty is a legal concept and can be exercised only through legal channels and in a legal manner. It avoids the vagueness and loose thinking of the first point of view; at the same time it steers clear of the legal abstraction, which, in the second, by pushing sovereignty too far back, almost destroys its existence (*24: 104*)'.

Notwithstanding the merits adduced by Gettell, the theory under

review does not seem to be satisfactory. It rests on a profound confusion between the State and government. The various law-making bodies are manifestations of the organic unity of the State and are not divisions of the sovereignty of the State. Their powers of law-making are delegated powers. Therefore, sovereignty does not rest in them, but is vested in that body which can make and amend the constitution and allot its powers among the various organs which express its will.

5. History of Sovereignty

In ancient Greece there was no occasion for claiming the sovereignty of the State because there were then no rival associations, nor was there any conscious opposition between the individual and the State. Nevertheless, we find in Aristotle's *Politics* his realisation of the need for a supreme power in the State. This power, Aristotle observes, may be in the hands of one, a few, or many. Supremacy is central in his political thought, but it is not the same as modern sovereignty. According to Aristotle, the supreme power or the ruling class makes the constitution, while to modern thinkers it is the constitution which makes the 'sovereign'. The Stoics who came later advanced the doctrine that the State does not make law but law makes the State, thus anticipating by many centuries the teaching of Duguit and his school.

There was not much need for a well-worked out doctrine of sovereignty in Roman times either. Rome became the mistress of the world and she had no external or internal competition to fear. Besides, the Roman jurists had no capacity for political speculation. However, in the classic body of Roman law we find the beginning of the theory of sovereignty. The well-known Roman dictum was: 'The will of the Prince has the force of law, since the people have transferred to him all their right and power'. Much is said in Roman law about the *imperium* of the State.

The Middle Ages presented conditions which were unfavourable for the formulation of any theory of sovereignty. These conditions were the conflict between the Church and State and feudalism. The Church claimed supremacy not only in spiritual matters, but also in secular affairs, and at least for some time almost made good its claims. The rival of the Holy Roman Empire was an empire only in name and could not establish supremacy of any kind. Co-existent with the

antagonistic claims of the Church and the Empire, there prevailed feudalism which meant decentralisation in political affairs. The king was not a 'sovereign' in the modern sense of the term. His power differed from that of the earls and barons, not in quality, but in quantity. If the king was 'sovereign' in his kingdom, so was the earl in his earldom and the baron in his barony. This state of affairs led to the theory of *dominion* (as against sovereignty), which meant superiority rather than supremacy. It also led to the conception of the territorial sovereignty of king or prince; and as the intermediate lords in the feudal system died out, the territorial sovereign became supreme. It is only gradually that the territorial sovereignty of an individual gave place to the later idea of the sovereignty of the State as such.

Renewed interest in Roman law in the twelfth century gave rise to the doctrine of popular sovereignty. Thomas Aquinas, the greatest thinker of the thirteenth century, taught that the supreme power arose from a purely human foundation—namely, the act of the people, in contrast to the God-established Church. The authority of the Pope, it was maintained, came directly from God; that of the Emperor from the consent of the people and the co-operation of the Church *(60 : 12)*'. This idea of popular sovereignty was developed still further by Marsiglio of Padua and William of Ockam in relation to the Church; and it played an important part in the Conciliar controversy. 'So universally prevalent was the idea of original popular sovereignty that from the end of the thirteenth century it was an axiom of political theory that the justification of all govornment lay in the voluntary submission of the community ruled. Government based on the consent of the governed was the ruling theory in the Middle Ages'. By 'people' was meant nothing more than the mass of the subjects.

The modern idea of sovereignty as the supreme law-making body was lacking in the Middle Ages. It was not easy to find in mediaevel Europe 'any authority supreme in all respects, and even if found, it was an authority merely to promulgate, administer and interpret a law already in being, not to make a new one (*56 : 98*).'

Bodin, in sixteenth century France, was the first writer to give a definite and comprehensive account of the modern theory of sovereignty. He lived at a time when France was torn by religious schisms as a result of the Reformation. The Catholics would not recognise a Protestant king and the Protestants would not recognise a Catholic

king. Bodin, who belonged to the nationalist party (*les Politiques*), saw the urgent need of a civic power within the State which would be able to assert its authority against other States outside as well as against other authorities within the State. In an earlier work published in 1566, Bodin asserted that the chief function of such a supreme authority was control over the administration and interpretation of law. But in his more famous *Republique*, published ten years later, Bodin emphasised the modern idea that the supreme function of the sovereign authority was to make laws which would hold against all powers within and without the State.

The chief features of Bodin's doctrine of sovereignty are:

(1) Freedom from external control. The king of France, *e.g.*, was to be free from the authority of other kings, the Pope, etc.

(2) Freedom from internal control. The king of France, Bodin said, was to be above all rebellious feudal powers within the State.

(3) Supremacy in the making of laws. Being itself the maker of laws, the sovereign power is above the laws that it creates. This does not mean that it is above duty and moral responsibility. It is only above the positive laws which it creates and enforces. In Bodin's words, 'Sovereignty is a power supreme over citizens and subjects, itself not bound by the laws'. Such a power somewhere in the State, Bodin conceived, was essential to national independence.

(4) Absoluteness. Sovereignty 'is that power which is neither temporary, nor delegated, nor subject to particular rules which it cannot alter, nor answerable to any other power on earth'.

(5) Indivisibility. It is absurd to speak of two supreme powers within the same State.

(6) Imprescriptibility. Sovereignty is unlimited in time. It is perpetual. Mere lapse of time cannot efface it.

(7) Limitations. Though legally supreme, the sovereignty of Bodin is subject to moral obligations imposed by 'the laws of God, of nature, and of nations.' The sovereign should recognise his moral duty to observe treaties with other sovereigns and contracts with his own subjects. However free he may be from the laws which he himelf makes, he is not free from the fundamental rules upon which the State itself rests and by which the sovereign is constituted and

his authority defined. So, according to Bodin's theory, 'there never could be a true republic except one founded in justice, nor any legitimate authority within such a republic (*56 : 100*)'. In these fundamental rules and immemorial customs, McIlwain finds the foundations of the modern 'written constitutions'.

It is necessary to note that Bodin's theory of sovereignty is State Sovereignty and not popular sovereignty. The sovereign power, says Bodin, may be vested in one, a few or the many. But his own preference is for the one, as is the case with Hobbes. He is definitely opposed to the mixed form. He does not regard the State as a whole as the sovereign, but 'one element thereof is the bearer of the supreme power and the other is the object against which this power is directed (*60 : 16*).' Bodin's theory of sovereignty furnished the basis for seventeenth century absolutism and laid the foundations for the modern doctrine of sovereignty.

Over against the theory of Bodin stood the theory of the '*Monarchomachs*'. The central features of their doctrine were 'the original and inalienable sovereignty of the people, the contractual origin of government, the fiduciary character of all political authority, and the consequent right of the people to resist and destroy the existing rules whenever found guilty of a breach of trust (*60 : 17*)'. The ablest among these writers was *Althusius*, who was one of the first to advance the theory of contract. He denies that sovereign power 'is absolute or supreme, since it is subordinate to the laws of God and nature (*60 : 18*).' He is inclined to admit, however, that it is free from the civil law. He maintains that the ultimate source of all governmental authority is the people 'which is the great political creator, the monarch-maker (*60 : 18*)'. Sovereignty, he claims, belongs not to any particular individual or individuals, but to the whole people. The supreme power was not only *originally*, but remains *permanently*, in the people. The people are immortal while the rulers are mortal. Hence the people alone are the permanent possessor of power. Governmental power is, therefore, purely derived authority. It rests up on a contract. If the terms of this contract are detrimental to the people's rights, they are to be regarded as null and void.

In spite of their able and energetic defence of 'popular sovereignty', neither the Monarchomachs nor their leader, Althusius, give us a satisfactory interpretation of this conception. By sovereign people they seem to mean only the governed part of the State. The

rulers are excluded. The idea of sovereignty vested in an entity which included both the ruler and the ruled is foreign to the thinking of the Monarchomachs.

The theory of *Grotius* occupies a middle position between the theories of Bodin and the Monarchomachs. Grotius seeks a compromise between the popular and the monarchical ideas. By sovereignty he means 'that power whose acts are not subject to control of another, so that they may be made void by the act of any other human will.' He does not insist, like Bodin, on the 'absolute and perpetual power' of the sovereign. So long as the power lasts it is irrevocable. "The supreme power is, as customary, limited by divine law, natural law and the law of nations; but also by such agreements as are made between the ruler and ruled (*60 : 21-22*).' Grotius freely concedes that the sovereign power is capable of division and quotes the example of Rome with one ruler in the east and one in the west.

As regards the location of sovereignty, Grotius' teaching was that the general bearer was the body politic or the State as a whole while the special bearer was the government. By adopting such a distinction Grotius was able to disprove the assertion of Althusius and the Monarchomachs that the supreme power everywhere belonged to the people *minus* the government.

Unlike modern thinkers, Grotius maintains that a people may completely alienate their sovereignty, as an individual has control over a piece of property. 'The land or the people may be bought or sold like any other property (*60 : 23*).' This patrimonial notion of sovereignty is totally rejected today.

If Bodin develops chiefly the internal aspect of sovereignty, Grotius emphasises the external aspect. He stoutly maintains the equality and independence of several sovereign groups.

The theories of Hobbes, Locke, and Rousseau have been dealt with in an earlier chapter. We shall, therefore, only sum up the most salient points here. Just as Bodin gives us a rationalisation of actual political conditions that prevailed in sixteenth century France, so *Hobbes* builds his theory on the unsettled conditions of England between 1640 and 1660. This was a period of political strife and civil war. The sovereign power required to cope with such a situation is conceived by Hobbes in the most absolute terms possible. Starting from a fictitious state of nature, interpreted in terms of primitive anarchy, Hobbes makes the individual surrender his rights unreservedly to a single person (or sometimes persons), who thenceforth becomes the bearer of

the personality of all contracting individuals. There is no question of the people delegating or alienating their sovereignty, for they are not a people until the sovereignty is created. Sovereign and its subjects come into existence simultaneously. The supreme characteristic of sovereignty is its power to compel obedience. Might, not law, makes right.

Sovereignty, as interpreted by Hobbes, is far more absolute than in the theory of Bodin. Once having entered the contract, the people have no right to enter into a new agreement of covenant, not even with God. The sovereign, not being a party to the contract, cannot be guilty of breach of contract. He can do no legal injustice, although he may commit moral iniquity. He cannot be punished. He is 'judge of the means necessary for the defence of the State; has the right to decide what doctrine shall be taught among the subjects; the law-making power, the judicial power; the right to carry on war; the right to appoint officers; the rewarding and punishing power *(60 : 26)*.' All these rights, says Hobbes, are 'incommunicable and inseparable'. Laws of God and of nature are not limitations upon the sovereign, because of these he is the final judge.

Sovereignty is thus absolute, unified, and inalienable and is based upon a voluntary but irrevocable contract. This theory played a very important part in the later development of political science.

Pufendorf in Germany developed a theory of sovereignty which combines in a remarkable way the views of Grotius and Hobbes. Like Locke, he posits two contracts—the original contract responsible for the formation of civil society and a subsequent contract between the people so formed and the government. The sovereign power thus created is *supreme* but not *absolute*. It cannot do anything it pleases. Restrictions should be placed on the ruler in order to check his tendency to usurp all authority. It is not essential that the sovereign have all power. It is sufficient if he has the highest power.

Locke was the Whig champion of the Bloodless Revolution of 1688. In his treatment of the social contract, Locke carefully avoids the term 'sovereignty'. He speaks of the 'supreme power' instead. The supreme power, for all practical purposes, rests with the Government, which is a delegated authority. Back of the government and superior to it, is the people as a whole. When the government fails to carry out its trust, the people rise in rebellion and overthrow it and set up another government in its place. So long as the government lasts, the legislature exercises the supreme power. This distinction between

two 'supreme powers' was developed in the nineteenth century into the clear-cut ideas of political sovereignty and legal sovereignty.

Merriam distinguishes an ascending series of three 'sovereigns' in Locke's treatment of the subject. They are the formal, the governmental, and the political sovereigns. The *formal* sovereign, so far as England is concerned, is the king. He is supreme while within the limits of the law when the legislature is not in session. He is, in Locke's words, 'the image, phantom or representative of the commonwealth'. In him is vested the executive power ; he also has a share in the legislative. Next in order comes the legislature, the supreme part of the government. It may be described as the *governmental* sovereign. The ultimate sovereign is the civil or political society which has set up the legislature, and it might be called the *political* sovereign. It is a latent sovereign and becomes active on the dissolution of the government. Revolution is thus justifiable when it is an act of the whole people. But there is difficulty in determining when it is such an act. On this Lockes' theory gives us no help. The success or failure of a rebellion does not prove that it is or is not an act of the community as a whole. It is instructive to note that 'in the particular' case of the reform of the English representative system, Locke does not contemplate the carrying out of his own theory (*29 : XII*)'.

Locke's sovereign authority, no matter where it is located, has no absolute powers.

Rousseau places sovereignty in the body politic as a whole. This is the familiar doctrine of popular sovereignty. In developing this conception, Rousseau combines the absolute sovereignty of Hobbes with the 'popular consent' of Locke. Sovereignty is regarded as absolute, inalienable, indivisible, and even infallible. The only manifestation of sovereignty is the general will of the people which, to use the humorous language of Hearnshaw, is 'Hobbes's Leviathan with his head chopped off'. In Rousseau's thinking there is very little to distinguish the general will from sovereignty. The terms are almost identical. General will always expresses the common interests of all the members of the State. 'What makes the will general is less the number of the voters than the common interest uniting them (*67 : 28*).' When the general will is in operation, the dissenting minority may be 'forced to be free', for they do not know what is to their own interest. They are more free if they are out-voted than if they are allowed to have their way. Acts of the general will alone can properly be called laws. Laws, therefore, must deal with general interests and must emanate

from the people as a whole. Government deals only with particular decrees and is a mere agent of the sovereign people. 'With Hobbes, the Government swallowed up the State, and became the sole representative of its personality... With Rousseau, the people became the Government, and the Government was lost in the State (*60 : 37-38*).'

Summing up the views of Hobbes, Locke, and Rousseau, Bosanquet observes: 'For Hobbes political unity lies in a will which is actual, but not general: while for Locke it lies in a will which is general, but not actual (*5 : 37-38*)'. Rousseau, on the other hand, places political unity in a will which is 'at once actual and general (*5 : 99*)'.

After the time of Rousseau the legal theory of sovereignty was developed at great length by *Bentham* and *Austin* in England. Bentham's idea of sovereignty clearly anticipates that of Austin. Thus he defines political society as follows: 'When a number of persons (whom we may style subjects) are supposed to be in the habit of paying obedience to a person, or an assemblage of persons of a known and certain description (whom we may call governor or governors) they are said to be in a state of political society'. Once again, like Austin, Bentham defines laws as the commands of a supreme governor or the sovereign. The powers of the sovereign are unlimited in theory, but are limited in practice by the possibility of resistance and 'express convention'. Bentham does not hold the Hobbist dogma that sovereignty is illimitable and indivisible.

The supreme duty of the sovereign is to make laws. Every law, to Bentham, is an evil, because every law, he argues, is an infraction of freedom. Therefore, laws are justifiable only in so far as they promote the greatest happiness of the greatest number. 'The right to elect and remove officials is the highest law of sovereignty'.

The teaching of Hobbes and Bentham reached its culmination in the writings of *John Austin*, who gave the doctrine of sovereignty a classical exposition which was widely accepted till recent times. Postponing a detailed treatment of Austin's theory to the next section, we shall confine ourselves here to its bare outlines.

In his *Lectures on Jurisprudence*, Austin writes: 'The notions of sovereignty and independent political society may be expressed concisely thus. If a *determinate* human superior not in a habit of obedience to a like superior, receive *habitual* obedience from the *bulk* of a given society, that determinate superior is sovereign in that society; and the society (including the superior) is a society political and independent'. Laws are defined simply as the command of a

superior to an inferior. In Austin's words: Law is the aggregate of rules set by men as politically superior, or sovereign, to men as politically subject'. The chief reason for the bulk of a given society rendering habitual obedience to a determinate human superior is the power it possesses 'to put compulsion without limit on subject or fellow subjects (*Volume I: 226, 1869 ed.*).'

One of the most important things to note in Austin's theory of sovereignty is that he makes power or might the determining factor. There is no question of laws or right. If Rousseau places the emphasis on *will*, Austin's emphasis is on *force* (*57 : 350*). Apropos of this, Bosanquet remarks: 'Austinian sovereignty is based on the idea of force; sovereignty in our sense (the idealistic) is based on the will of the whole (*5 : LV*).'

T. H. Green attempts a reconciliation of the apparently conflicting views of Austin and Rousseau on the question of sovereignty. He holds that Austin is right, as against Rousseau, when he locates sovereignty in a determinate person or persons with whom in the last resort, lies the recognised power of imposing laws and enforcing their observance, over whom no legal control can be exercised (*29 : 97*).' The term 'sovereign' having acquired this definite meaning in the western world, Green says Rousseau was misleading his readers when he located sovereignty in an indeterminate general will. He is right, however, as against Austin, when he holds that the primary reason for obeying the sovereign is not fear, but the consciousness that such obedience is essential to the promotion of a common interest of which the individual interest is an intrinsic part. In other words, obedience is rendered to a determinate superior because it is regarded as expressing or embodying the general will. The sovereign does not exercise an unlimited power of compulsion. Its power is dependent in the long run 'upon conformity to certain conviction on the part of subjects as to what is for their general interest (*29 : 96*).' Assent to the sovereign's authority is not 'reducible to the fear of the sovereign felt by each individual. It is rather a common desire for certain ends (*29 : 96*).' If this desire ceases to operate or comes into general conflict with the sovereign's commands, the habitual obedience will cease also.

6. Austin's Theory of Sovereignty

The legal view of sovereignty has been best expounded by John Austin. It carries with it a certain scientific precision and finality

which is highly impressive. It can be summed up under the following four simple propositions :

(1) In every State (or 'society political and independent', as Austin calls it) there is a 'determinate human superior', who receives 'habitual obedience' from 'the bulk' of its citizens.

(2) Whatever this superior commands is law, and without him there can be no law.

(3) The power of this superior, which is known as sovereignty, is indivisible.

(4) This sovereign power is absolute and incapable of limitation.

Criticism :

(1) All of these propositions have been severely handled by critics. Yet, as Lord points out, every one of them contains a truth or a half truth which is of importance.

(*a*) The first proposition was attacked by Sir Henry Maine in his *Early Institutions*, where he shows that in many of the Empires of the East there is nothing to correspond with 'the determinate superior' of Austin. In the Sikh kingdom of the Punjab, for instance, Ranjit Singh exercised despotic power over his subjects. To disobey even his smallest commands meant death or mutilation. Yet even he was subject to the customary laws of the community, and never issued a command in the Austinian sense of the term. Customs are the outcome of ages and do not proceed from any 'determinate person' or body of persons. From this it would appear that a sovereign in the Austinian sense is not indispensable to State existence for it is clearly absurd to say that wherever there is no Austinian sovereign there is either dormant anarchy or else a State of Nature (*54 : 88*)'. The real rulers of a society, says John Chipman Gray, are undiscoverable (*47 : 56*).

(*b*) It is relatively easy to locate the 'determinate superior' in the United Kingdom, but when the theory is applied to ancient despotisms of the East or to the constitution of the United States, it is not very helpful. Nevertheless, we agree with Lord in holding that because it is difficult to locate the supreme power in a given State we should not deny its presence altogether. 'It is always possible.. to find in fact as well as in theory an ultimate superior from whom there is no appeal (*54 : 88*)'. But the search

may not be worthwhile.

(c) Further, the theory is altogether abstract and legal and does not take into account the philosophical aspect of sovereignty. General will today is regarded as the basis of democratic States. As Garner puts it: 'This superior (*i. e.*, Austin's sovereign) cannot be the general will, as Rousseau thought, nor the people in the mass, nor the electorate, nor some abstraction like public opinion, moral sentiment, the common reason,t he will of God, and the like; but it must be some 'determinate' person or authority which is itself subject to no legal restraint (*22 : 179-80*).

(d) Once more, if the sovereign's authority receives only 'habitual obedience', it is somewhat illogical to regard it as 'unlimited'.

(2) Austin's second proposition is that the sovereign in the sense of a 'determinate human superior' is the supreme law-maker. Whatever he commands is law. As regards long-standing customs and immemorial traditions which exist in every community, alongside of positive laws, the Austinian position is 'What the sovereign permits he commands'. Taking for example, the English common law 'which exists in customs, which are explained, modified or expanded when the courts apply them (*28 : 115*)', it may be said that the King in Parliament permits the common law and as such can alter it in the way it pleases. But this is largely a theoretical power, for the sovereign cannot alter much of the common law without endangering its own safety.

If we turn to the ancient empires of the East, we find that the coercive power of the despot did not extend to the making of laws. For the most part these empires were tax-collecting and recruit-raising agencies. They did not impose laws as distinct from 'particular and occasional commands'. Neither did they 'judicially administer or enforce a customary law (*29 : 99*).' The general tenor of the lives of the people was regulated by authorities with which the despotic empires never interfered. These authorities were indefinite and did not reside in any determinate person or persons. In so far as they could be said to reside in any person or persons at all they reside' mixedly in priests or exponents of customary religion, in heads of families acting with the family, and in some village-council acting beyond the limits of the family (*29 : 99*).' Austin's theory, in brief, errs in regarding all laws as merely 'commands' and in over-emphasising the

single element of force. The supremacy of his sovereign is only in respect of positive law; and it is only in the legal, and not in the moral or physical sense possible to apply his theory. Only as a maker of positive law the sovereign is supreme and uncontrolled.

From all this it would appear that the Austinian sovereign is not the sole creator of laws. Duguit goes so far as to say that it is not the State which creates laws, but it is laws which create the State. 'Laws' he says 'are merely the expression of social necessity'.

(3) The third proposition is that sovereignty is indivisible.

(*a*) From one point of view, as Lord points out, this is an untenable proposition. In every political society there is a division of functions (though not of will), and without such division no government can be conducted effectively. In the British constitution, there is not only a Legislative Sovereign, but also an Executive and a Judicial Sovereign. The Legislative Sovereign consists of the Crown, the House of Lords, and the House of Commons. The Executive Sovereign is composed of the Crown and the ministers of the Crown. The Judicial Sovereign is the House of Lords sitting as a supreme court of appeal. These three ultimate authorities 'are so far independent of each other that the executive sovereign alone continues without intermission, whilst the legislature may be dissolved temporarily and the supreme judiciary is not always in session (*54 : 89*).' From this it would appear that sovereignty is divisible. In reply to it, the Austinians would say that the legislative sovereign is the real sovereign because it is habitually obeyed by the executive and the judges. But what about countries such as the United States which have a fundamental law, unalterable by the ordinary process of legislation ? In such cases we may suppose that there is 'a dormant body behind the different organs of legislation, ordinary and extraordinary, which has delegated its powers and rights to them, which theoretically can resume those powers and rights again (*54 : 89*).' But such a body which may be the people does not receive the habitual obedience of any one at all, 'except its own obedience through its agents (*54 : 89*).' In defence of Austin, it may be said that functions may be divided but not will. The will is a unit. The State cannot act in a self-contradictory way. The end must be single, however,

composite. Interpreted in this manner, it is true that sovereignty is indivisible. All that it means is the essential unity of the State.

(b) The distinction between legal and political sovereignty also has at ttmes been construed to mean the divisibility of sovereignty. Austin was aware of the fact that the people of England or 'the numerous body of the commons', as he describedt hem, had a share in sovereignty. But, not being able to anticipate the later distinction between legal and politicals overeignty, he fell into the error of believing that people formed a part of the legal sovereign. According to Gilchrist, Austin says variously that:

'(1) Parliament is sovereign,
'(2) The King and Peers and electors are sovereign,
'(3) The electorate is sovereign when Parliament is dissolved,
'(4) That the commons have powers,
(a) free from trust,
(b) are trustees (*28 : 116*).'

(4) The fourth proposition is that the sovereign power is absolute and unlimited. This position has been vehemently attacked by pluralists. Even non-pluralists recognise that though the sovereign may be legally unlimited, there are political and historical limits on every side. They consider the unlimited authority and infinite right of the sovereign power as mere abstractions of jurisprudence.

(a) Bluntschli says that 'the state as a whole is not almighty, for it is limited externally by the rights of other states, and internally by its own nature and by the rights of its individual members'. Bentham likewise claims that the sovereignty of the State is limited by its treaties with other States. Writing on the sovereignty of British Parliament, Leslie Stephen says that it is 'limited both from within and without; from within because the legislature is the product of a certain social condition, and determined by whatever determines society, and from without because the power of imposing law is dependent upon the instinct of subordination which is itself limited. If a legislature decided that all blue-eyed babies should be murdered, the preservation of blue-eyed babies would be illegal; but legislatures must go mad before they could pass such a law and subjects be idiotic before they could submit to it (*75 : 143*).'

The Austinian reply to all this is that the limitations mentioned are of a moral, and not of a legal, character and are self-imposed. 'Legally speaking the State is almighty (*51 : 51*).'

(*b*) The limitation imposed by customs has been pointed out earlier. In some parts of the world customs constitute a real limitation. To speak of Ranjit Singh 'permitting' customs in the Punjab is like saying that the reader 'permits' the law of gravitation to operate ! Ranjit Singh permitted what he could not alter. The Austinian reply to this criticism might very well be that the definition of sovereignty under consideration applies only to civilised States, and not to half-organised or primitive communities. But the difficulty is that even in civilised States it is to some extent at least an abstraction. Sir James Stephen writes, 'As there is in nature no such thing as a perfect circle, or a completely rigid body, or a mechanical system in which there is no friction or a state of society in which men act simply with a view to gain so there is in nature no such thing as an absolute sovereign (*51 : 57*).' Unlimited power is nowhere existent. Even in despotic countries there are influences of various kinds affecting sovereignty. The name given to this sum of influences in an organised and independent political community is political sovereignty.

(*c*) A further line of attack on the absoluteness of sovereignty comes from the standpoint of federalism. It is argued that at the time Austin enunciated his theory, the modern State was still in its infancy. Therefore, it is contended that whatever application the theory might have to the unitary State, it has little or no application to the federal State. Difficult as it may seem, it is not impossible to locate sovereignty in a federal State. Misconceptions arise because of the confusion between State and Government.

(*d*) There are some who claim that the Austinian theory of sovereignty would lead to legal despotism. Austin foresaw this criticism, but rightly maintained that there could not be a 'hierarchy of supremacies nor a co-ordination of creators nor a series of sovereigns ascending to infinity (*22 : 181*).' It is interesting to note that the practical object which Austin had in view in advocating the theory of absolute

sovereignty was to aid the reform of legislation in England in the nineteenth century, and not revive despotism (*30*). Many of the conservatives of the day were opposed to the Benthamite projects of reform and what Austin says to such critics is, in effect 'customs, divine law, etc., are not superior to or independent of State legislation. They are subordinate to it. Therefore, the supreme legislature is legally omnicompetent.'

(*e*) Laski criticises the theory of unlimited and illimitable sovereignty from the point of view of pragmatism, pluralism, and internationalism. On the basis of actual historical experience, he holds that 'no sovereign has anywhere possessed unlimited power, and the attempt to exert it has always resulted in the establishment of safeguards.' Even the British Parliament, he rightly claims, does not enjoy absolute powers in actual practice. 'Legally ,.. the King in Parliament may outrage public opinion ; practically, it can do so only on the implied condition that it ceases, as a consequence, to be the King in Parliament (*47 : 58*).' Looking at the question as a pragmatist, Laski comes to the conclusion that while the Austinian form is still preserved, the substance has been surrendered.

As a pluralist and internationalist, Laski wants sovereignty to be limited in the interest of other associations within the State as well as of those of internationalism. In some ways, he claims, the power of other associations is as original and complete as that of the State itself. 'These associations' he writes 'are, in their sphere, not less sovereign than the State itself (*47 : 50*)'. Therefore, 'the conception that authority not merely is but ought to be limited, is fundamental to political philosophy (*47 : 63*).'

The interests of humanity, says Laski, likewise demand the limitation of sovereignty. He is keenly aware of the fact that the idea of sovereign independent States competing with each other is inimical to world peace and world unity. Making a powerful plea for world interdependence, he observes : 'Externally surely, the concept of an absolute and independent sovereign State which demands an unqualified allegiance to government from its members, and enforces that allegiance by the power at its command, is incompatible with the interests of humanity. . . . Our problem is not to reconcile the interest of humanity with the interest of England, our problem is so to act

that the policy of England 'naturally implies the well-being of humanity (*47 : 64*).'

The above criticism of Laski we shall consider separately in the next section which deals with the various aspects of pluralism. In the meantime, we may say that the Austinian theory is sound from the legal point of view. It is clear and logical, although it does not go far enough. Many of the criticisms levelled against it are due to misapprehension and misconception.

7. Pluralism and State Sovereignty

In recent years there has been a distinct reaction against the absolutist conception of sovereignty. Pluralism may be said to be a reaction to the Hegelian conception of the State which elevates the State to a mystical height, viewing it as 'God on earth,' and investing it with not only supreme legal but also supreme moral authority. It looks upon the State as merely one association among many having limited competence and limited authority.

The pluralistic tendency has received further impetus in recent years as a result of the failure of democracy and the inherent weakness of democratic organisations. It is maintained by some that territorial representation is altogether unsatisfactory, that it does not adequately represent the diverse interests in the community, and that it squeezes out minorities.

The overloading of the present State organisation resulting in a breakdown of functions further strengthens the claims of pluralism. The modern State attempts too many things, and the consequence is inefficiency. As Ward puts it: 'There is apoplexy at the centre and Anæmia at the extremities'. To relieve congestion at the centre and increase social efficiency, pluralists advocate a decentralised State. 'Omnipotence', says MacIver, 'means incompetence'.

The pluralists do not want to abolish the State, as the anarchists and syndicalists wish to do, although the logical outcome of their theory may well be the abolition of the State. They are anxious to retain the State, but deprive it of sovereignty. They believe that the doctrine of sovereignty when it arose was the logical result of civil strife in European countries (France, for example, in the days of Bodin), and as such a natural stage in the development of the State. But today when the State is comparatively free from civil strife and the emphasis is on national well-being, it is contended that the pluralistic

theory is more in keeping with facts than the monistic theory. According to A. D. Lindsay, if we look at the facts, it is clear enough that the theory of the sovereignty state has broken down. Earnest Barker remarks : 'No political commonplace has become more arid and unfruitful than the doctrine of the sovereign State'. In Krabbe's judgment, 'the notion of sovereignty must be expunged from political theory'.

The attacks on State sovereignty take three different forms ; first, the State is not superior or anterior to other essential associations in society ; therefore, sovereignty is to be divided and powers are to be shared among groups ; second, the State is not, or at least ought not to be, independent in relation to other States ; third the State is not superior to law internally ; laws are superior to the State and practically independent of it.

A. State Sovereignty and Group Autonomy

Pluralism had its origin in the guild system of the Middle Ages. In the unsettled conditions of those times, the merchant and craft guilds of the period came to enjoy considerable autonomy and assumed the character of corporations. With the rise of national monarchies, however, they began to decline. Gierke in Germany and Maitland in England may be regarded as originating the pluralistic tendency in modern times, on the side of groups. Both these writers look upon permanent groups within society as having a consciousness and a will of their own, as distinct from those of their individual members. Each collective association, they argue, has a personality of its own and has a share in the making and elaborating of laws. The State's part in making laws is *principal* but not *exclusive*. Though both these writers deny the absolute sovereignty of the State, they do not disown its superior legal position. They regard the State as of paramount importance for purposes of co-ordination and adjustment between the various associations within society.

Much the same doctrine of the 'real personality' of groups has been advocated by Figgis in relation to the Church. The Church, he says, does not exist by and act of grace on the part of the State, but has 'powers of self-development like a person'. Its corporate personality is neither granted nor withheld by the States but has simply to be recognised. Human society, says Figgis, is not a 'sand heap of individuals related only through the State, but an 'ascending hierarchy

of groups'. The traditional doctrine of sovereignty is, therefore according to him, 'a venerable superstition'. The general trend of his thought is that there are different spheres of action in which different groups should function exclusively.

Claims like these have been made by M. Paul Boncour and Durkheim on behalf of professional and economic groups in society. Paul Boncour's view, as stated by F. W. Coker, is that besides a national sovereign deciding questions in cases affecting the common interest of the nation, there should be particular sovereigns to decide in matters where the special interest of some group is more important than the remoter interest of the majority. Durkheim likewise argues for the restoration of the ancient occupational association as a definitely recognised public institution. He wants professional groups to be the basis of political representation as well as the source of economic regulation.

More recently H. J. Laski has argued for a system which apparently would recognise the complete autonomy of such associations and deny to the State any claim to be the sole compulsory form of association or the sole representative of the general interests of man. His general point of view is that the theory of 'unlimited and irresponsible state is incompatible with the interests of humanity' and that 'the sovereignty of the state will pass, as the divine right of Kings had its day'. The doctrine of absolute sovereignty is to him a legal fiction and a barren concept. While not reducing the State to the level of a trade union, Laski is of the opinion that sovereignty should be shared by many groups. The State should perform its co-ordinating functions but has no right to assume omnipotence. Powers should become co-ordinate instead of being hierarchical, and authority should become federal.

G. D. H. Cole and other guild socialists believe in the division of society into consumers and producers and advocate the co-sovereignty of these two groups. Producers are to be organised under national guilds, and these guilds are to have not merely administrative but also legislative authority. The judiciary in these circumstances is to be called upon to interpret State law as well as guild law laid down by the Consumers' Parliament and Producers' Parliament respectively; and any conflicts between the two are to be settled by a co-ordinating agency, representing the essential associations, taking the form of something like a joint committee of the two houses. This co-ordinating body is vested with 'coercion' and 'the judiciary and the

whole paraphernalia of law and police' are placed under it. Such a position seems hardly logical for one who denies State sovereignty altogether. Ward is right when he says: 'As with Figgis, it is not authority as such they (the guild socialists) are repudiating, but a distribution of it, which places at a disadvantage the groups in which they are interested *(80 : 123-24)*.'

Among contemporary thinkers like MacIver there is a distinct pluralistic tinge. In his 'Modern State', MacIver advances the familiar pluralistic conception that the State is one association among many within the community, although exercising functions of a unique character. The State has the essential character of a corporation. It has 'definite limits, definite powers and responsibilities *(56 : 473)*.' As a corporation, 'it is the subject of rights and obligations which belong to it as a unity *(56 : 473)*.' Other associations being 'as native to the soil of society as the state itself', the State is not their creator. It stands for the common interest of all individuals and associations,' but not for the whole of the common interest *(56 : 473)*.' 'The partial interests of a thousand associations, cultural and economic, are also parts of the common interest *(56 : 476)*.' The business of the State is merely to give 'a form of unity to the whole system of social relationships.'

According to A. D. Lindsay, 'the State...can have control over the corporations within it only if, and so far as, the citizens are prepared to give it such power'. The State has no personality of its own, for the idea or a 'groupmind' a 'group will, or a group personality' in reference to corporations is an absurdity. The State is 'an organisation of organizations.' While other organisations have a voluntary and selective membership, the State has a *compulsive* and *comprehensive* membership. But this uniqueness alone, says Lindsay, is not enough to justify the doctrine of a sovereign State.

Earnest Barker rejects the conception of the 'real personality' of groups. But he admits the juristic claim that the permanent groups within society existed prior to the State and that each of them has a corporate character and function of its own. 'The state', says Barker, 'as a general and embracing scheme of life, must necessarily adjust the relations of associations to itself, to other associations, and to their own members—to itself in order to maintain the integrity of its own scheme; to other associations in order to preserve the equality of associations before law, and to their own members in order to preserve the individual from the possible tyranny of the group.' The State

is interpreted as a group of groups or a community of communities.

EVALUATION

Pluralism contains a large element of truth although it grossly exaggerates it. It is a welcome reaction against the glorification of the State. Whatever legal supremacy the State may possess, it should be subject to moral limitations. The pluralistic theory, writes Gettell, is a timely protest against the rigid and dogmatic legalism associated with the Austinian theory of sovereignty. 'Pluralists point out the growing importance of non-political groups, the danger of over-interference on the part of the State with the proper functions of such groups and the desirability of giving such groups greater recognition in the political system. The federal organisation of government and group representation in legislative assemblies which they propose are valuable devices in government.'

In her admirable book, *The New State*, Miss Follett sums up the merits of pluralism as follows: (1) The pluralists prick the bubble of the present State's right to supremacy. (2) They recognise the value of the group and see that the variety of our group life today has a significance which must be immediately reckoned within political method. (3) They plead for a revivification of local life. (4) They see that the interest of the State is not always identical with the interest of its parts. (5) Pluralism is the beginning of the disappearance of the crowd; and (6) It has seized upon the problem of identity, of association, and of federalism.

In spite of these merits, we cannot accept political pluralism for the following reasons:

(*i*) The logical conclusion of pluralism is anarchistic individualism, although pluralists as a whole do not admit this truth. To divide sovereignty is to destory it. Even after dividing sovereignty many a pluralist is eager to assign to the State the function of co-ordination and adjustment. Our contention is that for the satisfactory fulfilment of this function, the State should have legal supremacy. The State cannot adjust the relations of associations to itself, to other associations, and their own members, unless it is endowed with supreme legal control. If the State is to become in reality a group of groups and a community of

communities, and is effectively to exercise powers of co-ordination and adjustment among the various groups in society; certain consequences naturally follow. (*a*) The State should not tolerate the existence of any association which is hostile to general welfare and policy. (*b*) It should treat all associations alike and not give a privileged position to any association because of its numbers or its power to compel exceptional treatment. (*c*) It should not allow any association to combine different lines of action. A trade union, for instance, should not be permitted to impose a political levy. All this means that State should have final legal authority, whatever limitations may be imposed by law on the various organs of government.

(*ii*) The pluralist naively assumes that the various groups within society run along parallel lines and that there is no over-lapping of functions among them. If this assumption were sound, there might be no occasion for a sovereign State. But the facts of social life are the overlapping of functions, the clash of interests, and the conflict of loyalties. For the settlement of this state of affairs we require an authoritative State. The guild socialists forget that no sharp line can be drawn between economic and political questions. Even after advocating the 'co-sovereignty' of a political parliament and a national economic congress, they are obliged to resort to the much-despised idea of a unitary sovereign when they set up a joint body representative of all functional associations, including the State.The pluralists do not give us any clue as to the way in which they would decide what associationsare to be considered essential, and what non-essential, and on what basis representation is to be assigned to them.

(*iii*) The monistic enemy whom the pluralists attack is, to a very large extent, an imaginary figure. We are not apologists for Hegelian absolutism. But very few monists to-day are Hegelians. None of the traditional supporters of sovereignty, barring the Hegelians, claim omnipotence for the State. They acknowledge the fact that the actual power of the State is limited by the possibilities of effective disobedience, as well as by restrictions of a moral and rational character. Such admission, however, does not entitle the

pluralist to draw the conclusion that the State is not sovereign and has no superior claim to a person's allegiance. Gettell is right when he says that the State may recognise moral obligations, limit the scope of its activities, and make room for local decentralisation and representation of group interest without sacrificing its ultimate legal sovereignty. None of the traditional theorists—Bodin, Hobbes, Rousseau, and Austin—claim that 'to criticise or challenge, to disobey or resist, State authority is necessarily immoral, unethical, irrational, or anti-social, or even impractical (*F. W. Coker*).' All that they hold is that the State exists to enact and apply laws and that it cannot submit itself to another authority of the same kind, and yet remain sovereign. The State is not represented to be irresponsible. Only it is not responsible to any other authority similar to itself. 'In brief, the State, as an organisation for law within any given territory, is superior to all other social groups within such territory'.

The main tenets of monism, as summed up by Coker, are (*a*) that inter-relations between individuals and groups require an organisation of unification and co-ordination, (*b*) that this organisation should have the right to compel membership within a given territory, (*c*) that it should be endowed with coercive authority to carry out its orders, and (*d*) that there cannot be more than one organisation of this kind in a given territory. All these contentions seem so sensible that we cannot conceive of serious opposition to any of them.

(*iv*) The one unique feature of the State is that it is compulsive and comprehensive in its membership. Dr. Lindsay admits this uniqueness, but claims that it is not enough to constitute a sovereign State. We fail to see the logic of this position if sovereignty is interpreted, as in the preceding paragraph. The State is the one all-inclusive association. It is above all groups. It alone can rightly use force. It serves the universal interests of the members of a given society, while other associations serve partial interests. It alone can bring order out of chaos and a conflict of loyalties. The State, says Miss Follett, is a unifying agency. It utilises the whole of the individual. It acts on him not only through the various groups to which he belongs but also directly. In the striking language of Miss Follett, 'the

State cannot be composed of groups because no group nor any number of groups can contain the whole of me, and the ideal state demands the whole of me....My citizenship is something bigger than my membership in the vocational group. We want the whole man in politics....The ideal unified State is not all-absorptive. It is all-inclusive....The true State must gather up every interest within itself. It must take our many loyalties and find how it can make them one. The home of my soul is in the State.' This notable tribute to the uniqueness of the State from one who shows distinct pluralistic tendencies is indeed significant.

(*v*) Not only Miss Follett, but many other pluralists, fail to go clear over to the pluralistic goal of a non-sovereign State. This means that, in spite of their eagerness to establish a position of absolute equality for all essential associations, the logic of the situation compels them to give a supreme place to the State (*F. W. Coker*). Thus we find that Gierke and Maitland, while ascribing real personality to groups, recognise the fact that the State is above other social bodies.

Paul Boncour regards the State as the sole representative of general interests and national solidarity. Although the speaks of other associations as sovereigns, he gives them a place of subordination to the State. He wants the State to be a co-ordinating and adjusting organ. In particular, he says, it is the duty of the State to prevent any group sovereign from acting oppressively toward...the public, toward other groups, or towards its own members.

Figgis likewise regards the State as a community of communities and assigns to it a distinctive function and a superior authority as an agency of co-ordination and adjustment.

E. Barker writes : 'We see the State invited to retreat before the advance of the guild, the national group, the church. Yet whatever rights such groups may claim or gain, the State will still remain necessary adjusting force; and it is even possible that if groups are destined to gain new ground, the State will also gain, perhaps even more than it loses, because it will be forced to deal with ever graver and ever weightier problems of adjustment (*3 : 183*).'

(*v*) Pluralists do not make it absolutely clear just what it is that they want. If the State is to become an association like other associations, will the pluralists abolish compulsory taxation and compulsory citizenship ? One thing which is

> clear is that the pluralists attack the sovereignty of the State in order that the various permanent groups within society may have as large degree of local autonomy as possible. To such a legitimate desire no monist can rightly object: it is eminently just that a larger share in the control of industry and government should be given to those who are at present excluded from such control. But 'it seems neither necessary nor useful to abandon the doctrine of State sovereignty in order either to resist perversions of the doctrine or to promote the adoption of proposals for greater diversification and decentralisation in the organisation for the initiation and execution of State policy (*F. W. Coker*).' True sovereignty and true functionalism are not opposed to each other. Gettell thinks it probable that as the conflicts between the State and permanent groups are adjusted and the State gradually gives legal recognition to the new forces in social life, pluralism will disappear. As a theory which corrects the excess of the traditional doctrine of sovereignty and supplements what is lacking in it, pluralism is a valuable theory. But when it seeks to supplant it altogether, it becomes dangerous, if not futile.

It is curious that in spite of their loud protestations against State authority, many pluralists ardently support, or at least complacently tolerate, other forms of social coercion. Even such an ardent lover of liberty as Laski declares: 'Legally no one can deny that there exists in every State some organ whose authority is unlimited.'

B. State Sovereignty and Internationalism

For sometime past international lawyers and lovers of world peace and order have been attacking the doctrine of external sovereignty. Some international lawyers argue that although international law has not yet acquired the status of actual law and has no penalties attached to it, it has an important sanction behind it in public opinion. They further say that the present-day tendency is in the direction of making international law a reality providing it with a system of sanctions through pains and penalties. They insist upon the relative nature of external sovereignty, and they speak of semi-sovereign States. They hold that while the State will continue to be sovereign internally, in external matters it should not be allowed to do what it

pleases. They consider it utterly foolish to perpetuate the present state of affairs in which any State can deny the jurisdiction of international organisations and repudiate international agreements.

Laski, who may be regarded as a powerful advocate of international peace and goodwill, finds in the present-day attacks on external sovereignty a useful ally of pluralism. The case which he presents against the perpetuation of the doctrine of unlimited external sovereignty may be stated in his own striking words : 'The notion of an independent sovereign State is on the international side, fatal to the well-being of humanity. The way in which a State should live its life in relation to other States is clearly not a matter in which that State is entitled to be the sole judge.' The common life of States is a matter for common agreement among States. England ought not to decide alone what armaments she will build, what immigrants she will permit to enter. 'These matters affect the common life of people ; and they imply a unified world organised to administer them. If men are to live in the great society they must learn the habits of co-operative intercourse. In a world State, however it be built, and whatever the measure of decentralisation that obtains, there is no room for separate sovereignty (*47 : 55-66*)'.

Appreciation and Criticism

We find ourselves in substantial agreement with the point of view described above. It seems to us that the need for external sovereignty is not so urgent as the need for internal sovereignty. The time has come for the State of the world to set up a strong, impartial and universally respected international body and abide by its decisions in all matters of common interest. The League of Nations and the Hague Tribunal were steps in this direction. The United Nations Organisation today has the potential power of becoming an instrument of world co-operation and peace, but before this can come about, the nations of the earth will find it incumbent to modify current adherence to absolute State sovereignty.

If States are to surrender their sovereignty, either partly or wholly, in international relations, it may well be asked, what is to become of the doctrine of absolute, unlimited and indivisible sovereignty ? Our answer is that the well-being of humanity is of infinitely greater importance than the forcible fitting of world situations into a preconceived theory in order to save face.

Two logical explanations, however, may be given of this new situation—surrender of external sovereignty—without invoking the help of the theory of divided sovereignty. If we succeed in obtaining a unified legal control centering in a world organisation, there will still be sovereignty vested in a world sovereign State. This sovereign State may be of a unitary or federal type depending upon the nature of the relation between the world State and the component nation States. The other explanation is that offered by Bodin and a few other monists who recognise that the sovereignty of the State is limited by its moral obligations to other States. Although these obligations are self-imposed and have no legal validity, world opinion in favour of them may be so educated that no State will dare to violate them. State limitations are not uncommon even in the sphere of internal sovereignty. If, in spite of these considerations, the ends of humanity require a theory of divided sovereignty, we should cheerfully submit to such a contingency.

C. State Sovereignty and Law

Duguit in France and Krabbe in Holland have approached Pluralism from a totally different angle—the angle of law. According to Duguit, law is 'independent of, superior and anterior to, political organisation, and is objective, not subjective' (Coker). Laws are the conditions of social solidarity. They are the outcome of social living. They are obligatory not because they are laid down or permitted by a determinate human superior, but because they state rules of law which are imperative in themselves. The business of the State is to sustain these laws. The personality of the State is a mere fiction, for the State has no real existence apart from the persons who comprise it and who are bound together by social interdependence. Law limits the State, and not the State law. Therefore, emphasis is to be laid on the duties of the State, rather than on its rights. Public service rather than sovereignty is to be its essential characteristic. As Gettell remarks, Duguit is not primarily interested in the political importance of social groups within the State; his chief interest lies in placing judicial limitations on administrative action and in developing the theory of State responsibility.

Social solidarity is the keyword of Duguit's political thought. It roughly corresponds to a 'law of nature' prior to the State. It is the theological source of law. Duguit condenses the rules of conduct

arising out of social solidarity as follows: 'Do nothing to diminish social solidarity by similitude, or social solidarity through division of labour. Do everything materially practicable for the individual to increase social solidarity in both its forms (*16 : 296*).' 'Solidarity for Duguit is almost metaphysical. It is the source of morals, the logical basis of law and expresses the essential significance of sociological groupings (*80 : 129*).'

In the light of all this, Duguit considers the conception of sovereignty outgrown. He does not say, however, who is to decide whether a given rule of law is in the public interest or not and how it is to be formulated into a statute law. The effect of Duguit's theory seems to be to enlarge the power of the courts. Law is to be socialised and the State is to be held responsible to the courts for adequate services.

Krabbe's point of view is essentially similar to that of Duguit. The only sovereignty which he is willing to recognise is the sovereignty of law. Law is independent of and superior to the State. It does not arise out of social solidarity, as in the case of Duguit. It is the outcome of the *sense of right* of the majority of the community constituting the State. It is thus subjective in origin. Power is not the essential feature of the State. The characteristic mark of the State is that it is a legal community. 'The State is nothing except a legal community...a portion of mankind having its own independent body of legal relations. Hence the State performs no function whatever except to impute legal value to certain interests'.

Unlike Duguit, Krabbe carries this idea of law into the realm of international relations. No nation, he believes, has a natural right to lead an independent legal life. 'If the interests of the international community are not furthered by an independent legal life, the claims of a nation to regulate its own communal life are invalid (*80 : 159*).' According to Krabbe, the sense of right should extend to international affairs as well, and to the extent to which progress is made in this direction, the legal activity of existing States should contract. Eventually, Krabbe believes, the present States will become provinces of one supernational State, but before this supernational plane is reached, the 'international community must pass through the phase of the idea of sovereignty (*44 : 271*).' An independent international sovereign is a necessary step in the development of international society into an independent legal community (*80 : 161*).'

The upshot of Krabbe's theory is to narrow down the State to

a legal community and make the judge the centre of power in society. His political interest is internationalism.

Law, to these writers, imposes limitations not only on the legislative and other organs of the State, but also on the State itself. Le Fur, another French writer, states this point of view as follows: 'Far from being exclusively determined by its own will, the State is like every other person determined in part by a foreign power which is at the same time anterior and superior to the States: this superior power is that of the Law—natural law or rational law (*23 : 199*).'

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This is a point of view which we cannot very well accept. If all that this theory means is that the laws of any State are not the mere fiats of the legislature or of a superior person uninfluenced by the desires and opinions of the people, but are often coloured by the popular sense of right and wrong, prevailing ideas of social justice, and the like, we have no objection to it. No organisation in any community 'makes' the content of laws. Both in the way in which laws are made and the way in which they are enforced, they often reflect a will other than that of the formally constituted legislatures. If law were to be true to itself, it must possess the essential element of reason in it. The monist has no hesitation in accepting all this. Yet he cannot accept the pluralist's definition of law.

Besides, as Coker reminds these jurists, law is something that is *prescribed*; it is not merely what a commonsense of right demands or what the community demands. Outside a determinate person or legislature, we can speak of the spirit of laws, 'a common will' and the like, but we cannot speak of laws in their generally accepted connotation. 'Social solidarity' and 'sense of right' are incapable of giving us specific laws which can be interpreted and enforced by the judges.

Furthermore, the theory under consideration seems to re-open the question of natural law and natural rights from which political theory has been comparatively free in recent times. To revert to natural law and natural rights will lead us into a labyrinth out of which political theory cannot easily find its way.

Finally, there is evidence to show that when these jurists attempt to limit the sovereignty of the State by means of law, they really have in mind the organs of government and not the State itself.

CONCLUSION

(*a*) Pluralism, as said already, may be regarded as a welcome reaction against the excesses to which the traditional theory of sovereignty has been carried by such of its supporters as Hegel. To attribute moral sovereignty to the State, as Hegel does, is a dangerous procedure to adopt. The State is no doubt legally supreme. But it has no right to free itself from all moral obligations to its citizens and to other States. The Hegelian idea that what the State commands is necessarily right is a mistake. In so rejecting the State absolutism of Hegel, however, we do not necessarily become pluralists.

(*b*) Pluralism has rendered a great service to modern political theory by inviting the pointed attention of States to the reality of group life. There is no doubt that economic, professional, social, and religious groups play a vital and unique part in the life of the community. Therefore, to regard them as existing merely by the grace of the State is nothing short of insolence. It is only fair that permanent associations functioning in society should be given as large a degree of local autonomy as possible to manage their own affairs. They should also have an effective share in moulding the general policy and laws of the State. But all this does not mean that the State should be reduced to a level of equality with other associations. The State should continue to be in a class by itself. It should remain supreme.

(*c*) Even after granting complete internal autonomy to the essential associations in the community, we require a superior organisation for purposes of co-ordination and adjustment. If the State is only one association among many associations having similar power and similar status, it is difficult to see how it can satisfactorily fulfil its unique function of adjustment and adjudication. Membership in the State is *compulsive* and the authority exercised by the State is comprehensive. Without these unique qualities, the State cannot very well maintain conditions of justice and social welfare. Coker is right when he says that the non-political social groups cannot thrive and attain their ends without the distinctive services of the State.

(*d*) The innumerable groups which function in society do not exhaust all the services required for the well-being of man. They serve only partial interests. The State is the only organisation which is competent to deal with the universal needs of the members of society. Thus it is that we find that the care of common interests is a special function of every civilised State.

(*e*) If we reject the monistic theory of sovereignty, the only logical position to take is that of the anarchists and syndicalists. Pluralism attempts an impossible middle position. Pluralistic doctrines are, in the long run, anarchistic doctrines.

(*f*) If the term 'sovereignty' is open to abuses and cannot be freed from the kind of absolutism assigned to it by Hegel, the term 'supremacy' or 'final authority' will serve just as well from the point of view which we have adopted. The view adopted in these pages has more in common with the theory of Bodin than with that of any of the traditional supporters of sovereignty.

(*g*) The conclusion to which we have been led may be stated in the words of Sabine : 'For my own part, then, I must reserve the right to be a monist when I can and a pluralist when I must'.

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11

THE ORGANISATION OF GOVERNMENT

1. Theory of the Separation of Powers

The traditional classification of the organs of government has been into the legislative, the executive, and the judicial ; but this classification is considered to be too simple to suit modern conditions.

Aristotle, the father of Western political thought, distinguishes between the deliberative, the magisterial, and the judicial powers. Although in theory Aristotle found it easy to separate these three powers, in practice they were all exercised by the same persons in ancient Greece.

The Roman thinkers who came after Aristotle—particularly Polybius (a Greek taken to Italy as a hostage) and Cicero—stress the importance of a 'balanced equilibrium of powers'. They find the monarchic, aristocratic, and democratic elements embodied respectively in the Consuls, the Senate and the Popular Assembly, each part of government acting as a check upon the others. Both these writers consider a 'mixed' form of government embodying a system of checks and balances as being essential for stability.

During the Middle Ages no contribution was made to the doctrine of the separation of powers.

Bodin, one of the earliest thinkers of the modern period, sees the importance of separating executive and judicial powers. He insists that the Prince should not administer justice himself, but should delegate this power to an independent tribunal, his argument being that not to separate the two powers would mean the indiscriminate mixture of justice and mercy, of strict adherence to law and arbitrary departure from it.

In his *Civil Government*—Locke makes a casual reference to the theory of the 'Separation of Powers'. According to him civil society was constituted for the protection of life, liberty, and property, and the means for the attainment of these ends are as definite as the ends themselves. These means express themselves in a three-or four-fold

division of governmental activity, namely legislation, which provides for a 'standard interpretation' of the law of nature which fixes these rights; the judicial side of governmental activity. namely the provision for an authority just and impartial for applying the interpretation of the Laws of Nature as among the individuals in a community; and the executive side of it, the provision for employing the force of the community in enforcing by penalties the prescriptions in the laws. The function of maintaining the interest of the community and of its individuals in relation to other communities Locke calls the 'Federative' duty.

His doctrine of the separation of powers breaks new ground. The functions of legislation and execution must needs be separated; and certainly it is unwise to invest the makers of laws with the duty of enforcing them, for either they may exempt themselves from the operations of such laws or may suit the laws to serve their own ends.

As to Locke's treatment of the theory, the principle is merely suggested as a determinant of the relations between the Legislature and the Executive. The 'tripartite' division of functions, familiar today, and the complementary doctrine of mutual checks and balances which it entails, do not find a place in the speculation of Locke, but owe their development to Montesquieu, the French Philosopher, who expanded the English Philosopher's suggestions.

It was Montesquieu (1689-1755), the celebrated French writer, who made the doctrine his own in this *Esprit des Lois* (*1748*). Curiously enough, after studying the working of the English constitution on the spot for two years, Montesquieu gave it as his considered judgment that the stability of the English constitution was due to its adherence to the separation of powers. It is agreed by all today that Montesquieu was mistaken in his interpretation of the English constitution. Even though the cabinet system of government which is a direct violation of the separation of powers was not fully developed in the eighteenth century when Montesquieu wrote his work, there was no clear separation of powers even in England of his day. It is instructive to note that even the English jurist, Blackstone, who wrote twenty years later, repeated the error committed by Montesquieu in holding that the fundamental principle of the English system of government was its clear-cut distinction between the legislative, executive and judicial powers. The fact of the matter is that both Montesquieu and Blackstone concerned themselves with the principle of the English constitution and not with its actual practice, thus laying themselves open to the charge of being superficial.

By temperament and upbringing Montesquieu was an aristocrat. Nevertheless he had a profound respect for liberty, which he considered to be the greatest of all human goods. It was for the securing of this good that Montesquieu advocated the separation of powers. He realised that it was in the nature of authority to abuse itself and that unless, therefore, clear limitations were laid down, arbitrary rule would be inevitable. Moderation in exercise of governmental authority, he considered, was the *sine qua non* of good government. In the interest of such moderation, he enunciated his well-known theory of the separation of powers, according to which each power should be exercised by a different organ of government and among the various organs of Government there should be a system of checks and balances so that no one organ might become all-powerful. The doctrine as stated by Montesquieu himself is :

> 'When the legislative and executive powers are united in the same person or body, there can be no liberty. . , . If the power of judging were joined to the legislative power, the life and liberty of the subject would be exposed to arbitrary control . . . if it were joined to the executive, the judge might behave as an oppressor'.

Montesquieu particularly emphasised the separation of the executive and legislative powers. Within the legislature itself there were to be two chambers, one acting as a check upon the other.

The doctrine had a profound influence on the framers of the American constitution as well as upon revolutionary France. Whereas in France the theory broke down, leaving only administrative courts as a tribute to the doctrine of the separation of powers and the cabinet system was adopted by the 1875 constitution, in the United States of America it has come down to modern times. Even today the legislature, the executive, and the judiciary are organised independently of each other. Thus, the President of the United States, who is the chief executive, and his cabinet are not members of the legislature, and the close contact between the legislature and the executive found in countries which have adopted the British system as government is unknown in America. The two houses of the legislature are separately constituted with different periods of tenure and with different powers. The judges of the Supreme Court are appointed by the executive with the consent of the Senate, but the terms of appointment are such as to make the judiciary virtually an independent branch.

Not only are the organs of government separate from each other,

but each organ exercises certain checks upon the rest. Thus, the consent of the Senate is required to all the appointments of chief officials made by the President. War and peace are to be declared by the Congress, and treaties entered into by the executive require ratification by the Senate. The President is empowered to send messages to the Congress outlining his legislative programme, but a convention of the constitution prevents him or any of the members of his cabinet from appearing on the floor of the Congress to elucidate or defend the government policy. The President has the power of veto on the acts of the legislature, but it is a suspensive, and not an absolute veto.

Criticism:

While the principle of the separation of powers is generally admitted as valid, embodying as it does the scientific principle of differentiation, the practical difficulties experienced in working it makes it of little value to us today. Even the United States does not possess a rigid separation of powers. In modern governments every legislature performs some executive duties; and the executive has certain judicial functions. The chief value of the theory is in emphasising the independence of the judiciary; but tnis end is attained more easily by other means such as security of tenure to the judges, liberal salaries which are independent of annual budgetary provision, and freedom of the judges from party alignments or control.

Another value of the theory is that it lays down the sound principle that government must act according to ell-established rules or laws. Arbitrary rule is a negation of good government. The theory admonishes the executive and administrative officials not to interfere with the processes of law and justice. In the words of Finer, it imposes upon each power the need to explain itself.

In justification of the doctrine, some have argued that while functions may be combined, powers should always remain supreme. This seems to us to be a distinction without a difference. How functions can be performed without the necessary power to perform them it is difficult to see.

The doctrine of the separation of powers was of great value against the despotism of the King at one time and, at a later date, against the despotism of Parliament. But there is no danger of either of these despotisms today. In democratic countries we may require protection against the domination of parties and the 'despotism' of civil servants, while, in countries with a dictatorial form of government, we need protection against the dictatorship of the party and the Leader.

Against none of these types of domination, the separation of powers is of any avail. It is too mechanical in nature. The best safeguard of individual liberty in a democratic country is a well-informed and vigilant electorate.

The smooth working of government under modern conditions calls not so much for separation of powers as for the 'co-ordination' or 'articulation' of powers. Each organ should regard itself as a servant of the public and do everything in its power to advance its end. Apropos of this H. J. Laski writes :

'Legislatures could not fulfil their task unless they were able both to interfere in the execution of law, and also, on occasion, to overrule by statute the decisions of the judges the results of which are widely felt to be unsatisfactory. An executive is bound, in applying the law, to clothe the general principle in the garment of detail ; and in the modern State, this function covers so wide an ambit that it is often difficult to distinguish it from the work of the legislature. The judiciary, finally, which settles either the competence of the executive (in which case it determines the substance of legislative will) or dispute between two citizens (in which case it extends the legal imperatives of a state to cover new ground, or denies that the ground involved comes within the ambit of those imperatives) is in fact performing a function which is legislative in character (*22 : 63*).'

As against what Laski writes, the doctrine of the separation of powers, while making for a certain degree of efficiency, places a premium on jealousy, suspicion, and inner friction. The nature of power is such that anybody entrusted with it wants to press it to the utmost limit and prevent others from exercising their power. The serious limitations of the doctrine of the separation of powers were clearly brought out during the second term, as president, of Woodrow Wilson, when the State refused to ratify the treaty which the President had concluded.* In the picturesque language of Finer, the theory of the separation of powers throws 'government into alternating conditions of coma and convulsion.' In modern democracies the legislature, representing the people as it does, occupies a more important place than

* Several of President Truman's plans for the welfere of the country have been torpetoed by an unsympathetic legislature especially in the fields of price control and fair employment practices.

that occupied by the executive or the judiciary.

There is no doubt that the British system of government which knows of little or no separation of powers as understood by Montesquieu, and in which there is an intimate and continuous relation between the executive and legislature, works more efficiently than the American system. It provides for 'a single focus of government.' Writing on the contrast between the two systems, Ramsay Muir says: 'If the Separation of Powers is the essential principle of the American constitution, concentration of Responsibility is the essential principle of the British constitution.' Another writer has said: 'Separation of powers means confusion of powers.'

Willoughby, who adopts a slightly different point of view, argues that in the English government there is a separation of powers organically but a union of powers personally, while in America there is a union of powers organically, but a separation of powers personally. The principle strictly adhered to in England is that of vesting the exercise of each power in a distinct organ, but this distinction is ignored in the United States. What prevails in this latter country is a personal separation of powers, but not an organic separation.

In the British ministry or cabinet we find a good illustration of union of persons (*28: 254*) but a separation of organs. The ministry acts as an executive organ, a legislative organ, and an administrative board. When it acts in one capacity it keeps in abeyance its power in other capacities. To paraphrase Willoughby on this question: when the ministry acts as an executive organ, it acts independently of Parliament and as representative of the Crown. When it acts as a legislative organ, it keeps within the legislative field and does not seek to take to itself strictly either executive or administrative functions. When it acts as an administrative board, it does not seek to exercise either executive or legislative powers, but confines itself strictly to the problems of administration.

Thus in the British constitution the several branches of government are kept separate. But they are made to realise that they are part and parcel of a common mechanism by placing the same persons incharge of several organs.

As regards the American constitution, Willoughby writes that many people imagine that the public liberties of the American people are safeguarded by a strict separation of powers. But the fact of the matter is there is considerable union of powers. The difficulty of working the American constitution is not due to the separation of

powers but is due to a joint exercise of powers by two or more authorities.

In the American constitution, says Willoughby, neither the union of powers nor the separation of powers is consistently carried out ; and the consequence has been a chronic struggle between the executive and the legislature. This struggle has been intensified by the failure of the American constitution to realise the importance of administration as a separate branch of government.

Seeing the futility of a rigid application of the theory of the separation of powers to modern conditions, H. Finer divides the powers of government into *resolving* powers and *executive* powers, the former including the electorate, political parties, parliament, cabinet, and the chief of state ; and the latter including the cabinet, the chief of state, the civil service and the courts of justice. To a discussion of some of these we shall now turn our attention.

2. Organs of Government

In modern democratic States, there are not three, but seven organs of government, closely related to each other and capable of being grouped under 'policy-making' organs of government and 'policy-enforcing' organs of government.

A. The Electorate

This is the body of people in any country who have the power of vote. By the exercise of this power they make and unmake governments in the last analysis. It is only seldom that an entire country acts as a single constituency, as in former Fascist Italy. The usual practice is to divide the country into easily manageable constituencies with nearly equal population. Where a constituency is entitled to one and only one representative, it is called a single-member constituency. Constituencies sending up more than one representative are called multi-member constituencies. England and India have single-member constituencies for the most part. Five hundred and seventy six out of the six hundred and fifteen seats in the British House of Commons are filled up by single member constituencies.

In India before freedom we had separate constituencies for minorities and for special interests such as commerce and the landed aristocracy, as well as University constitutencies. All this was

undemocratic and stood in the way of India evolving into a genuinely national and democratic State. Communalism is a survival of tribalism, and representation of special interests is a vestige of feudalism.

Representation by estates was common in several of the European countries till comparatively recent times. Political reformers in England agitated for a long time for the principle of 'one member, one vote'. In the words of J. Bentham, the prince among reformers, 'Each (was) to count for one ; and nobody for more than one'. This reform has come to pass in all democratic countries, in spite of a few anomalies here and there. Plural voting existed in England until 1950 according to which a person could vote as a member of the constituency in which he lived as well as an occupier of business premises worth £ 10 a year. University graduates, too could exercise a second vote in voting for the member for whom the constituency is entitled. The present law is, one person one vote.

Women were denied the franchise till very recent times, especially for national elections. Partly as a result of continuous and even militant agitation and partly as a result of the notable part played by them during the Great War, women above 30 secured the vote in England in 1918. In 1928 this age discrimination was abolished and both men and women were placed on the same footing. The United States extended the franchise to women by the 19th Amendment to the Constitution in 1919, and Germany provided for women franchise in the Weimar constitution. France until 1945 and Italy until 1948 refused the right of vote to women, one reason being the fear that it might unduly strengthen the influence of the clergy on politics. Spain, another Catholic country, removed the restriction some time earlier. Soviet Russia treats both men and women alike as regards the franchise. Even foreign residents are allowed to vote. In India women enjoy the franchise for all elections on the same terms as men.

The extension of the franchise to women was heralded by many as inaugurating an era of purity and social justice and humanitarianism in politics. However, women as a whole have not exercised the vote any more discriminately than men. After fighting for the vote, many have failed to use it. Still, as a result of the presence of women representatives in the legislature and of the increasing interest of individual women and women's associations in the civic life of the country, greater attention is being paid to social questions and, in a country like India, to the removal of the legal and social disabilities of women and to the satisfaction of the needs of children.

The age at which a person is entitled to vote varies in different countries, the prevailing age being 21, as in Great Britain and India. Turkey and Soviet Russia enfranchise their young people at 18, when a great many are still immature. The German constitution of 1919 threw open the franchise to men and women above 20. In some countries the right to vote is not given till a person is 25. Some have argued that it is a mistake to enfranchise youth who are often irresponsible and radical in their outlook. But the prevailing opinion is that by the time youth reaches 21 he has enough knowledge of the world around him to exercise his vote intelligently. Even his alleged radicalism is not to be frowned upon in view of the preponderance of conservatism in positions of authority. Besides, youth is bound to learn by experience.

The age at which a person may contest a seat to the national legislature is usually fixed at a higher level than the age at which he can vote. Thus in the United States, Germany, and France a candidate has to be at least 26; in Japan he has to be 30. In Great Britain and Russia the same age is fixed for both candidature and voting. In India under the expiring constitution the qualifying age for the candidate is 25 for the Provincial assemblies and 30 for the Provincial Councils. No maximum age limit seems to be fixed anywhere. In England a candidate is not required to be a resident of the constituency from which he proposes to stand, but not so in the United States.

Modern theory and practice are in favour of universal, equal, and adult suffrage. But certain classes of people in some countries are excluded—such as the insane, certified mental defectives, certain classes of criminals, paupers, and bankrupts. Aliens are excluded from the franchise in all countries, except in Russia. Most countries lay down rules for the naturalisation of aliens. The usual qualification is residence in the country for a period of years. In the United States each state has its own rules regarding electoral qualifications. Some states require a citizenship and literacy test in English in addition to residence. The 15th Amendment to the Constitution provides that no person may be excluded for the vote merely on the ground of race or colour. But the southern states which are colour-ridden have devised several subterfuges by which to keep the Negroes out. In the South African Union the black people, who form nearly 4/5ths of the population, have no vote. Germany, under Hitler, denied all political rights to the Jews. In several of the European countries national minorities are excluded from the vote. Certain classes of government servants

such as election officers and soldiers are excluded from the vote in some countries.

Property and educational qualifications are usually insisted upon as conditions for voting. But with the advance of democracy these qualifications are fixed at as low a level as possible. The earlier theory was that only those who had 'a stake in the country', that is, propertied classes, should vote. But this resulted in the creation of many vested interests and the perpetuation of much injustice. The Reform Bills of 1832 and 1867 in England fought against restrictions based on high property qualifications. Till 1919 the three-class system, based upon the direct amount of taxation paid, prevailed in Prussia, according to which a voter in the first class roughly possessed four times the political power of a man belonging to the second class and sixteen times that of a member of the third class.

As regards educational qualifications, simple literacy in the language of the area is considered adequate. While literacy is no doubt a great advantage, mere illiteracy ought not to be considered a serious disqualification. As the Lothian Committee observes in relation to the Indian situation : 'Illiteracy by no means implies that the individual is not capable of casting an intelligent vote on matters within the range of his own knowledge and experience'. Mr. S. Srinivasa Iyengar says : 'Ability to follow the debates in the newspapers and to read books and papers containing an exposition of facts and arguments bearing on rival policies and measures, is indispensable to a sound scheme of democracy'. Political parties can do a great deal in educating the electorate.

We no longer subscribe to the old theory that the right to vote implies the duty to back up one's vote by physical strength, if necessary. No one claims today that women should be excluded from the vote because they do not bear the brunt of the battlefield as much as men. Therefore, military qualification for voting is irrelevant today. Everybody has a right to good life and as such every normal person who is not an enemy of the State should have the vote.

In the view of many thinkers the right to vote is not a right which automatically belongs to every citizen. It is a privilege which can be conferred only upon those who are capable of exercising it for public good. This being so, some argue that the duty to vote is not only a moral duty but also a legal obligation. Thus we find that some of the Cantons of Switzerland, Australia, Belgium, and the Argentine Republic make voting compulsory. In Mexico a person who has failed to

exercise his vote once without sufficient excuse is barred from voting at the next election. Compulsion in this matter, as in many other matters, is undesirable and defeats its own end. The proper remedy for non-voting is not compulsion but the stimulation of interest and the avoidance of too many and too frequent elections.

The old theory of representation was 'Community' representation. People were grouped according to classes or estates, and each class voted separately. The system which has been in vogue in modern times is territorial representation. Recently this system has come in for much criticism. It has been argued by guild socialism, syndicalism, etc.; that the mere fact that people live together in a given locality does not mean that their interests are common or tend to become common. A coal miner, for instance, is certain to have more in common with another coal miner living fifty miles away from him than with a commercial traveller or a school master who may be his next-door neighbour. On the basis of this argument, it is said that a truer form of representation is the vocational. The system was that in the corporative State of Italy under Mussolini. It is too early to say whether the system will work more efficiently than territorial representation. One of the chief criticisms of vocational representation that it is not always easy to say what occupations should be recognised as entitled to representation and what amount of representation should be given to each of them. Besides, this system is likely to multiply rival interests and groups and militate against the creation and maintenance of a spirit of true citizenship. 'Neighbourhood' is just as important a factor in man's social life as 'profession'. The primary function of a legislature is not to protect the interests of rival economic groups, but to secure and advance the interests of the nation as a whole.

Proportional Representation. Single member constituencies often lead to anomalous results when there are more than two candidates contesting for a seat. Votes are so divided that the successful candidate frequently represents the minority, and not the majority, of the electorate. In the General Election of November, 1935, in Great Britain the pro-Baldwin group secured 430 seats in the House of Commons, although their total voting strength in the country was only 11,764,660; while the parties opposed to the Baldwin ministry, though securing 10,071,993 votes, obtained only 185 seats. To remedy such an anomalous state of affairs, several devices have been put forward such as the Second Ballot, the Alternative Vote, the Cumulative

Vote, the Limited Vote, and Proportional representation by single transferable vote.

Of these the last mentioned, known also as the Hare plan, seems best fitted for producing the most equitable electoral results. But as yet there is no great enthusiasm for it although it has been tried in India, the Dominions, and certain constituencies of Great Britain such as University Constituencies.

According to this scheme, the quota required for the election of any candidate is fixed before hand in accordance with the formula

$$\text{Quota} = \frac{\text{Valid votes}}{\text{Number of candidates} + 1} + 1$$

In the voting paper the elector indicates his preference with numbers 1, 2, 3, 4, 5, and so on. After the polling is over, the first preferences are all counted and candidates securing more than the quota are declared elected. As the effect of no vote is to be lost, the superfluous first votes (that is votes above the quota) of any candidate or candidates are passed down the list in accordance with the order of preference indicated in the ballot paper. Votes are transferred according to the order of preference indicated not only from those candidates who have enough and to spare but also from those who have no chance of being elected at all on account of the few first votes cast in their favour. Their ballot papers are scrutinised to find out their second, third, fourth preference, etc., and the votes are transferred accordingly. This two-fold transference of votes is kept up among the 'continuing' candidates till a point is reached when the number securing the quota is equal to the number of candidates to be returned from the constituency in question. At this point the process of transfer stops and the results are announced. The transference of votes from the bottom is resorted to at a later stage in the process than transference from above since it means the exclusion of certain candidates.

There is no doubt that, more than any other system, the system of Proportional Representation will more accurately represent the relative strength of the parties in the country. But it has certain defects. Instead of reducing the number of parties in a country to two or three main parties, it has a tendency to multiply them and stereotype the existing ones. Every small group is encouraged to maintain its own peculiarity without seeking to find points of contract with other groups and eventually be merged in them. The system is likely to increase the importance of the party machine. The successful candidate is not

likely to take the same personal interest in the welfare of his constituency, as his election depends upon the working of a mathematical formula and not upon his having successfully wooed a definite body of known voters. With a heterogeneous group of representatives in Parliament, a strong, united and homogeneous cabinet becomes well-nigh impossible. Besides, there will be no periodical by-elections which provide a rough indication of the degree of confidence in which the government of the day is held by the electorate. Furthermore, the process is too complicated for the average voter.

All these arguments have been countered by the advocates of proportional representation. In smaller bodies such as municipal councils in Canada and the United States, the system has proved useful. While the Liberal party in England was a staunch supporter of the proportional representation system, the two major parties did not take to it kindly.

B. Political Parties

Political parties are considered to be indispensable for the successful working of modern democracy. By a political party we mean an organised body of people who stand for certain principles and policies in the political life of the country by whose operation they seek to promote the interests of the country as a whole. Burke defines a party as 'a body of men united for promoting by their joint endeavours the national interest upon some particular principle in which they are all agreed'. A political party, it must be borne in mind, does not mean a faction and sharp differences of opinion among party leaders are not to be interpreted in terms of a personal quarrel. A political party without definite political principles and a clear programme is not worthy of the name.

It is a well-known fact that even in the same family members differ from each other in temperament and outlook. Some are by nature timid, cautious, and afraid to launch out on bold schemes. Others, on the contrary, are bold, adventurous, and radical in their thinking. Such differences are found on a wider scale when we are dealing with a large group of free people keenly interested in advancing the welfare of the country.

Parties with differing policies and programmes under despotism are not tolerated. Modern dictatorships are all governments by one party, being a euphemism for the arbitrary rule of a few people.

Parliamentary government, on the other hand, is essentially a party government. It allows full freedom of thought and discussion within, of course, the limits of constitutional propriety and ordinary decency. As a consequence, people divide themselves into such groups as Conservatives, Liberals, and Labourites or Republicans and Democrats. Owing to periodical changes in the general life and thought of the country, party labels do not always clearly indicate the programmes for which the parties stand. Thus at one time in the history of England the Liberals stood for a policy of non-intervention in the industrial life of the country and the Conservatives stood for considerable regulation of industry and for programmes of social reconstruction. Later on, however, the two parties changed places almost completely. Even on such fundamental issues as free trade and protection the attitudes of parties have not been consistent. Whatever difference in principle there may have been between the Republicans and Democrats of the United States of America in the past, they have largely disappeared to-day.

The party system is especially valuable in countries which have adopted parliamentary democracy, for it helps to bring about a harmonious relation between the executive and the legislature which is the bedrock of successful party government. The party in power in the legislature is the party from which the executive is drawn. When, owing to a national crisis, a coalition government is formed, the parties are represented in the Cabinet or ministry roughly in proportion to their strength in the popular house. This happened in England during World War II with Winston Churchill as Prime Minister.

This advantage of an harmonious relation between the executive and the legislature is found lacking in the constitution of the United States where it is possible to have those two organs of government controlled by the two rival parties in the country. Even in such a country, parties play a very important role in creating public opinion on the momentous questions of the day.

There can be no doubt that under the complex conditions which prevail in modern states, parties render a valuable service in clarifying issues and policies. The party system helps a person to see his way through a maze of conflicting policies and intricate details. The issues before any modern government are so complex and difficult of comprehension that without the systematic guidance offered by political parties, the average voter will find himself entirely at sea.

Parties perform in politics a function similar to that performed by lawyers in arguing the different sides of a case. Just as it is possible for a clever lawyer to make right appear wrong and wrong appear right, a party by means of false propaganda, catch-words, and shibboleths may mislead the public altogether. But such tactics do not always succeed, especially if the electorate is educated, well-read and discriminating. Generally speaking, the party discussion enables the voter to discover the truth for himself. Lowell rightly says that the party serves as 'the broker of ideas'. Parties present alternative programmes and rival candidates and the voter is asked to choose among them. Parties further help in the evolution of a general will which is the core of democracy.

To sum up the discussion so far in countries which have adopted the parliamentary system of government, parties help to make the government strong and stable ; and in both parliamentary and non-parliamentary forms of democratic government they help to make the opinions of the electors articulate.

Some recent thinkers, however, have seriously questioned the validity of the party system. Against the continuance of the party system, it is said that party mentality is very often a partisan mentality and that parties lead to bribery and corruption and exercise a tyranny of the most thorough-going kind both over their representatives in the legislature and over the general public. All these charges no doubt contain enough truth to make them appear plausible, but it must be remembered that it is easy to exaggerate them.

The primary aim of a party is to succeed and in its craze for success a party frequently adopts dubious vote-catching devices. The party platform is made as broad and as nebulous as possible so as to catch the largest number of votes. Promises are made which are never meant to be fulfilled. Political opponents and rival political programmes are misrepresented, if not ridiculed. The choice before the voter is so limited that at times he is forced to choose between a knave and a fool. Party spirit and party loyalty are so worked up that passion and prejudice gain precedence over calm thinking and cool action. When it comes to appointments made by the government of the day, loyal supporters of the party are chosen in preference to well-qualified men who belong to the opposite party or to no party whatever. Party corrupts even the administration in a country like the United States where the 'Spoils System' has reigned supreme for generations. Voters are bribed, flattered and cajoled. In the

words of Lord Bryce, the party system has 'demoralised politics and made them sordid.' Such rigid discipline is exercised over the members of a party that very little room is left for individual judgment or independent voting. Party members in the legislature often play the role of 'dumb-driven cattle.' They obey meekly the behests of the party whip. Decisions are made outside the legislature in party conclaves, and the legislature is used only to register them. Individuality is crushed and members are encouraged to be insincere and hollow in thought and action. The party machine is controlled by a few selfish individuals and 'bosses' who declare a secret or open war upon ability and integrity of character.

The fair-minded student of public affairs is bound to admit the weight of many, if not all, of these criticisms. Yet he may not be prepared to throw out the baby along with the bath water. Mr. S. S. Iyengar is much concerned about the loss of freedom of the average member of the legislature. But it must be remembered that not all legislators are power-houses of ideas. Many of them are probably happier to have a party programme and policy which they can blindly follow than take the trouble of examining every detail for themselves for which they may not have the requisite qualification. Besides, it is always possible for an active member to influence policies and decisions in party meetings. Party discipline is undoubtedly a check upon the egotism of individual members. It curbs their ambitions and eccentricities and enables them to take their proper place alongside of others who think and act with them. In a country like India, as elsewhere, to destroy parties altogether would mean undue development of individualism, each person playing the game for himself. If undue regimentation is bad, so is undue individualism. To the charge that the party system leads to dictatorship, our answer is that dictatorship is not the result of a well-organised party system working within the constitutional framework. It is the result of the disintegration of the party system, as was the case in Fascist Italy and Nazi Germany. Without a well-organised party system with adequate resources behind, able but poor candidates have little chance of being elected.

Even if we abolish party funds and party organisation by means of legislation as Mr. Iyengar suggests, there is no doubt that parties will come back to life under some other form, less desirable than before. Being driven underground, parties are bound to transform themselves into secret cliques struggling to advance their own selfish

ends. It is instructive to note at this point that even in Switzerland where the party spirit has been least developed the trend is in the direction of strengthening the party system. /

Conditions for the successful working of party. The party system has worked well in countries which have a strong two-party system. A strong government and an almost equally strong opposition presenting alternative programmes of public interest seem to be necessary if parties are not to degenerate into cliques. The opposition in England plays a very vital part in the conduct of public affairs. By its responsible criticism of the measures proposed by the government, it not only keeps the government alert and watchful, but also renders a great public service. It is no wonder, therefore, that it is described as 'His Majesty's Opposition'. Canada pays a salary to the Leader of the Opposition in recognition of the fact that his work in the House is just as important as that of any member of the Government in power.

France has demonstrated in no uncertain terms the weakness of the multiple party system. Government is formed by continuous bargaining and trafficking among members of different groups who have no scruples in changing their allegiance on the slightest pretext possible. It is no wonder that French governments have been exceedingly unstable, altogether at the mercy of the legislature. It is more than likely that the historian will find in the French multiple party system a potent case for the defeat of France at the hands of Nazi Germany.

If public opinion is not able to prevent the formation of frivolous or avowedly selfish parties, we may have to resort to legislation. Any new party should be put on probation for some years and be obliged to establish its *bona fides* before it is allowed to become permanent. Parties which have no clear programmes or policies substantially different from those of existing parties have no right to exist. Our constant endeavour should be to integrate groups which are similar to each other in order that there may not be more than two strong parties in the country. No tolerance should be shown to a party whose avowed object is to break up all other parties and establish a dictatorship of its own.

Parties founded merely on differences of class, caste or community have no abiding place in politics. They are a fruitful cause of national weakness. By perpetuating fissiparous tendencies they place themselves entirely at the mercy of the interested outsider. Even

broad national questions which should be judged purely on their own merit are approached from the caste or communal angle. The caste and communal spectacles distort the vision with regard to economic, social, and political policies and programmes. At times of national crisis parties should be prepared to lay aside their differences and work together as a single unit.

In no circumstance should a party be allowed to maintain a private military force, knowing as we do that the Nazis in Germany and the Fascists in Italy rode to power on the backs of their private armies. The only legitimate weapons which a party may use in winning adherents are persuasion and conviction. The long tongue and recourse to physical force are signs of barbarism. Democracy can function only if political minorities defeated at elections accept their defeat. Their only constitutional right is to convert themselves into a majority by argument and persuasion.

If party government should succeed, it is necessary to keep the administration outside the reach of parties and politicians. Government officers from top to bottom should be elected on the basis of merit by a body which commands the respect of everybody by its stern impartiality. Government officials who are found guilty of favouring men of their own caste or community should be dealt with mercilessly. Recruitment, transfer, and promotion of public servants should follow the recognised canons of public service.

Everything possible should be done to break up the control of party 'bosses' and time-servers. Those who seek to control the party machine for their own selfish ends should be hounded out of the party. For accomplishing this end sound public opinion is necessary. Leaders of outstanding ability and unimpeachable character are the life breath of a party.

The failure of the party system is partly a reflection on the people themselves. If the electorate is not intelligent, critical and discriminating, party dictatorship is inevitable. It is absurd to say that a person should vote in a particular way because his father and grandfathers before him voted that way; or because the members of his class or profession want him to vote in that manner. The intelligent voter should be prepared to defy customs and conventions when necessary and vote according to the dictates of his conscience and judgment.

The party system is bound to fail if there is a lack of character among politicians and the people at large. A high degree of public

honesty and honour is the first requisite of successful party government. Without truthfulness, honesty, and a single-minded devotion to public weal, parties become mere cliques, corrupting the people and eating into the vitals of the country. The voter on his part should cultivate independence and judgment, a horror of bribery and corruption, and a keen sense of public duty. Parties should become a synonym for co-operative methods of realising the common good. Without character of a very high order widely prevalent among the people, any type of government, particularly the democratic, will come to grief. An honest and well-informed press and platform can do much in making the party follow the norrow and strict path of public morality.

C. The Legislature

Among the organs of government, especially in democratic countries, the pride of place is given to the legislature. But such has not been the case always. In olden days, as Jenks points out, laws were not made but discovered. They were folk laws based upon the customs of the people, and it was the business of what governmental and religious authorities there were to discover these laws. As time advanced folk laws became less important, and laws took the form of ordinances or decrees issued by the executive for the maintenance of peace. These were not as permanent as folk laws and did not cover such a wide range. At a still later stage came laws by established estates which were more or less representative assemblies. Finally there came into being parliaments and parliamentary sovereignty.

When parliaments were first summoned, the object was not to secure their help in law-making, but to vote supplies for the carrying out of the king's policy. A place in Parliament at this time was not a position of honour and influence to be covered, but an onerous responsibility to be avoided. Soon, however, representatives in Parliament realised that before supplies could be voted they could insist upon the redress of grievances, which a harassed king, involved in foreign wars and domestic difficulties, felt obliged to do. From this time on began the continuous history of law-making by the legislature. It is instructive to note that even today in England while laws are made by 'the King's Most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal in the Parliament assembled, etc.,' supplies are granted to His Majesty

'freely and voluntarily' by 'the commons...in Parliament assembled'. At first, requests for laws took the form of petitions to the king, but later they were framed as bills.

SOURCES OF LAW

Even today the lagislature is not the only source of law-making. The five other sources of law, as analysed by Professor Holland, are:

(1) custom or usage;
(2) religion;
(3) adjudication or judicial decision;
(4) scientific commentaries; and
(5) equity.

Custom played a very important part in all early communities. There was no written law. The unwritten customs of the family, clan or tribe were interpreted and applied by the patriarch or council of elders. These customs for the most part were concerned with questions of life and property.

Religion was closely connected with customary law. Customs were not merely the ancient usages of the people, but they were also supposed to have divine sanction behind them. To disobey such God-given laws was to court Divine wrath, meted out by the village headman, council, priest, or priest-kings. History shows that while the religious basis of laws has continued for a long time in the Eastern countries, in the West it was soon replaced by the political.

Custom and religion did not always speak with the same voice. When the inter-mixture of tribes took place, there arose a complexity of customs, usages, and religious laws. In such cases, conflicts were referred to the wisest men in the community whose decisions were accepted as binding. These early judges not only adjudicated between differing customs and practices, but also applied common sense to the solution of problems for which these old customs were obviously unfitted or had made no provision at all. These legal decisions of judges were first transmitted orally, but were later committed to writing. 'Judge-made' laws even to-day constitute an important portion of legislation. Inasmuch as later decisions of judges are often based on the earlier decisions of the members of their fraternity, judges play an important, though indirect, part in law-making.

The next source of law is scientific commentaries which have acquired a reputation through the year. Lawyers and judges attach

much importance to the opinions of great lawyers or jurists. Thus in countries where the English system of law prevails the legal opinions of men like Coke and Blackstone are received with great respect. Such opinions, to start with, are only arguments and not decisions. But to the extent to which they are accepted as sound, they in course of time are given the weight of decisions. 'The authority of the commentator is established, just like a judge-made decision, by frequent recognition'. What the commentator does is to collect, compare and 'logically arrange legal principles, decisions and laws', and in so doing, to lay down 'guiding principles, for possible cases.' 'He shows the omissions and deduces principles to govern them. He provides the basis for new law, not the new law itself (*28 : 166-7*).'

Another fruitful source of law is equity. By equity is meant 'any body of rules existing by the side of the original civil law, founded on distinct principles and claiming incidentally to supersede the civil law in virtue of a superior sanctity inherent in these principles (*57*).' Equity, in other words, simply means equality or justice. It is based on what earlier writers used to describe as the law of nature or nations. In cases where the existing law is altogether unsuitable or does not apply, the judge cannot wait till the law is altered or a new law is made. So what he does is to apply that law of 'intrinsic fairness' or 'equality of treatment', and this is known as equity. In England, the Court of Chancery is 'the supreme judicial organisation for equity jurisdiction'.

The final and most important source of law is legislation, which is an expression of the sovereign will of the people. In all modern States there is a tendency for legislation to supplant the other sources of law. Legislation more and more replaces custom and equity. The codification of law tends to limit the sphere of judge-made laws, and scientific commentaries are used largely for purposes of discussion. In the making of new laws, well-established customs, religious opinions, and equity do play a part, but more as factors influencing legislation than as direct sources of law.

Laws made by Administrative Departments of Government

In the modern State the legislature alone does not make laws. The executive head in the United States for example, negotiates treaties subject to ratification by two-thirds vote of the Senate. The

British Parliament does not have the time or the necessary knowledge to draft all the details of every legislative measure, and hence what it does in several instances is to content itself with passing the broad outlines of the measure, leaving the administrative departments to fill in the details by means of administrative orders, rules and regulations. Some of these are provisional in character and require the approval of Parliament, while others do not even require this formality This species of 'delegated' or 'subordinate' legislation has assumed such great dimensions that Chief Justice Hewart described administration in England by the telling title 'the New Despotism'.

Legislation by People

Switzerland, which is the home of political devices, has made experiments in direct legislation by means of the referendum and initiative, and other States such as the Commonwealth of Australia and some of the state constitutions have followed suit. Referendum simply means that a piece of legislation, after being passed by the legislature, has to be approved by a specified majority of the voters before it can become valid. In certain cases, the referendum is optional depending upon a request being made for a popular vote by a specified number of voters or by a specified number of the component units in a federation. In other cases, however, especially as regards constitutional amendments, as in the Commonwealth of Australia, the referendum is compulsory.

While the referendum is negative in character in that it approves or disapproves of legislative measure, the initiative is positive in that it enables the voters themselves to take the lead in law-making. According to this system a certain number of voters have to ask for legislation on a given question. They may themselves formulate the details of the legislation or give the general aim of the projected legislation to the legislature, and ask it to fill in the details. In either case it is submitted to the vote of the people and becomes effective if ratified by a majority voting at the poll. The initiative is said to be more popular in the state governments of America than is the referendum.

The Plebiscite is resorted to in ascertaining the wishes of the inhabitants of a territory in transferring territory from one State to another or in creating new states. This practice has been in] operation in Europe since the end of the 18th century. In 1935, the Saar region was restored to Germany as the result of a plebiscite. While

on the surface it appears to be a democratic institution, in recent times there has been much intimidation under the name of plebiscite, as in Austria and Czecho-Slovakia. India is pledged to the conducting of a plebiscite in Kashmir. But the almost insuperable difficulties involved have delayed matters.

Reviewing the value of direct legislation as a whole, it may be said that while small areas long accustomed to free democratic institutions, like the Swiss communes and cantons, can make it a success, it is likely to do more harm than good in large countries lacking the Swiss traditions of democracy and local self-government. According to Mr. Srinivasa Iyengar, direct legislation, instead of weakening the prestige of the legislature, is particularly valuable in times of crisis. It keeps down the excesses of party spirit, restores the national temper, and is unequalled as a method of practical instruction in politics.

THE ORGANISATION OF LEGISLATURE

Both in political theory and practice the organisation of the legislature has been a much-discussed question. Bi-cameral legislature is the usual practice everywhere, especially as regards the centre. In provinces and component units of federation bi-cameralism is not uniformally found. Several of the Indian States in the new constitution possess bi-cameral legislatures. England has had a bi-cameral legislature more because of historical circumstances, than as a result of deliberate design. Countries which have copied the British system of paliamentary government have copied her as regards bi-cameralism too.

Where there are two legislative chambers, it stands to reason that they should be organised differently, both as regards their composition and powers and functions, in order to avoid conflict and jealousy. The lower house, which is also called the popular house, is usually elected by the people themselves, and representation is on the basis of population, and a wide franchise. The upper house, also known as the second chamber, usually represents interests in the community, or part states in a federation, and is usually not directly elected.

The British House of Lords is largely hereditary, and possesses larger numbers than the House of Commons. The Senate in the United States consists of 96 members, two from each of the 48 states, and has been directly elected since 1913. It is a continuous body, each member sitting for six years, one-third of the total number

retiring every two years. It is one of the strongest, if not the strongest, second chambers, in the world. Second chambers in Switzerland and the Commonwealth of Australia are constituted on the same principle as the American Senate. Each of the Swiss cantons sends up two representatives and each of the six Australian States sends up six representatives to their representative federal second chambers. The Canadian Senate, like the American, consists of 96 members, but they are nominated by the Governor-General on the recommendation of the ministry. Representation is not on the basis of the provinces, but roughly on the basis of population. The Reichstag under the Weimar Constitution (1919) of Germany represented the states, as opposed to the people, both in legislation and administration, but did not give them equal representation. The French Senate, another strong second chamber in the world, consisting of 314 members, is indirectly elected, and sits for nine years, one-third retiring every three years. The Union of South Africa combines the nominative and elective principles. In some of the Australian Provinces members of the upper chamber are nominated for life by the Governor. In some they are elected on a special and restricted basis. Turkey has a uni-cameral legislature.

Norway has a unique kind of a second chamber. The Strothing, which is the popular house, is elected every three years. As soon as it is elected it proceeds to elect one-fourth of its members to constitute an upper house known as the Lagthing, the rest constituting the Odesthing. The Lagthing has no power to initiate legislation, but it can suggest amendments to bills sent up by the Odesthing. If the amendments are not carried and the Lagthing refuses to yield, a joint session is held in which two-thirds majority decides the issue.

If second chambers are necessary at all, they should be distinctive from the popular house, act independently and responsibly, and possess the necessary capacity and impartiality effectively to revise the work of the lower house.

Are Second Chambers Necessary?

It does not follow, because second chambers are virtually universal, that they are indispensable. The usual reasons given in favour of second chambers are (1) that they are a useful check upon the hasty and ill-digested legislation of the lower house and (2) that in federal constitutions, they safeguard the interest of the component

units. Both these arguments have been seriously questioned, and the last word on them has not yet been uttered.

Writing in the letter half of the last century, J. S. Mill feared that one house alone might become 'despotic' and 'overweening' and that a second chamber was necessary in order to prevent 'the corrupting influence of undivided power.' Sir Henry Maine went so far as to say that 'almost any second chamber is better than none', on the ground that a well-constituted second chamber provided not a 'rival infallibility' but an 'additional security.' According to Lord Acton, a second chamber is the essential security for freedom : it provides the necessary balance of power in the policy, gives protection to the minorities, and a good revising chamber.

In England, the Rump of the Long Parliament did away with the second chamber and tried to make itself perpetual and independent of the electorate. But the result was so bad that Cromwell described it as the 'horridest arbitrariness that ever existed on earth'. The Convention Parliament voted that 'government is and ought to be by King, Lords, and Commons'.

France, too, experimented with a single chamber, but gave it up as a fruitless endeavour. In our own day Greece tried the same experiment but with no better results. From all this it would appear, as Marriot points out, that there is a singular uniformity in favour of two legislative chambers. Mr. S. S. Iyengar, on the contrary, holds that bi-cameralism in democracy is 'an outworn creed'. According to him, the institution of bi-cameralism is due to 'a hesitant faith in democracy, and a desire to conciliate minorities', and 'there is no valid reason why the popular will should seek two channels of expression, why democracy should speak in two voices'. In his view, second chambers are retained 'to provide scope for the ambitions of party men who may not be accommodated in the first, to lessen rivalries in leadership within the party itself, and generally to enlarge the circle of party influence'. Their introduction in the Indian provinces in the past, it would seem, was to bolster up vested interests and to put a brake on the possible radical tendencies of the lower house, especially as regards landed property.

The classical argument against bi-cameralism was stated by Abbe Sieyes when he said : 'If a second chamber dissents from the first, it is mischievous ; if it agrees with it, it is superfluous'. The fitting reply to this dilemma which so paralyses thought is in the words of Finer : 'If the two Assemblies agree, so much the better for our belief

in the wisdom and justice of the law ; if they disagree, it is time for the people to reconsider their attitude'.

On theoretical grounds, there is no doubt whatever that a good case can be made for a properly constituted second chamber. As a revising body, it can play a very useful part in legislation. On account of the nature of its composition, longer term of office, greater experience, and comparative freedom from the prejudices and passions of the popular house, it can consider measures in all their aspects in a more or less detached manner. But what practice shows is that it is likely to become a bulwark of conservatism and even of reaction in politics. More than once the British House of Lords had to be threatened with 'swamping' before it would yield to reason, and the Parliament Act of 1911 has rendered it almost powerless. It no longer has the right to meddle with money bills, and in matters of ordinary legislation it no longer enjoys a co-ordinate authority. The utmost that it can do is to hold up legislation for about 30 months or three successive sessions of Parliament.*

The argument that a second chamber is necessary in order to check hasty and ill-digested legislation does not strike us as weighty. The various readings of a bill, submission to special committees, consultation of the public through the press and the platform, etc., seem to be sufficient safeguards against any hasty action being taken. Besides, on most urgent reforms, to give the power of delay to the upper house is perhaps to court disaster in the long run, and pave the way for popular revolution.

The further argument that a second chamber is a fundamental part of the federal principle can also be questioned. Matters which are purely local are dealt with by the local legislatures, and a second chamber is not necessary to protect state interests as against national interests. Taking the United States as an example, we find that the Senate has not been any less 'national', or less progressive than the House of Representatives. It is wrong to assume that one house will think only in terms of provincial or state interests and the other in terms of national interests. The likelihood is that in both houses there will be provincial-minded and national-minded men. We, therefore, consider Marriott's judgment an exaggeration when he says that

* The Parliament Act of 1949 has redued the period during which the House of Lords had the power to delay legislation from three sessions and two years to two sessions and one year, operating retrospectively to the session of 1947-48 when the measure was first introduced.

an upper chamber is a primary and effective guarantee for the preservation of the federal constitution.

To conclude, whether second chambers are necessary or not, our reply is that no uniform answer can be given which will be applicable to all cases. A great deal depends on historical antecedents. The United States and France will undoubtedly be the poorer if their Senates are abolished. Both of them have attracted to themselves men of mature wisdom and experience, who have played a notable part in law-making and policy framing. Even Great Britain will be the poorer by the abolition of the House of Lords, which has been a reservoir of ministers, and a store-house of knowledge and administrative experience, and has made possible unhurried and dispassionate discussion of some of the great questions of the day. Canada, on the other hand, is not likely to lose much if her Senate is abolished. So far as constitution-making for the future is concerned, a second chamber should be an exception rather than the rule. In order to avoid waste, it may be provided that controversial measures should be passed twice over by the lower house, with a general election intervening if necessary, before they take effect.

Powers and Functions of the Legislature

Law-making is not the only function of legislatures. They have consider the budget, to vote supplies, and to exercise general superintendence over administration. In the matter of legislation, the usual practice is to give a more important place to the lower house than to the upper. Finance bills can be introduced only in the lower house. Non-finance bills in many countries can be introduced in either house, but when there is a deadlock between the two houses, the upper house has usually to yield. In many constitutions arrangements are made for a joint sitting of the two houses or committees of the two houses, where the final decision is reached by a specified percentage of votes ; and since the popular house is almost everywhere the more numerous body, the dice is loaded in its favour.

The British Parliament is one of the most powerful legislative Chambers in the world. Its powers are as wide as public opinion and the will of the electorate will tolerate. It has both constituent and legislative functions. In the United States and Switzerland, on the other hand, an elaborate machinery is set up for changing the constitution. In Australia, too, constitutional changes require a special

procedure. In France, while the constitution is technically not flexible, it can be changed by a relative simple process.

In countries where the parliamentary system of government prevails, parliament exercises control over administration through questions and answers or interpellations. While in England a vote of no-confidence cannot be moved in this connection, such a procedure is possible in France, and is frequently used in overthrowing ministries. Writers on public administration draw a parallel between the legislature and the board of directors of a business concern, in that both are responsible for the function of direction, supervision, and control, as against execution. In the United States it is the legislative branch of government which 'possesses the final authority to determine how the administrative branch of government shall be organised, how duties shall be distributed among the several parts, and what methods of procedure shall be employed by them.

The legislature, particularly the upper house, also possesses a few judicial functions. Even today the Lord Chancellor, the presiding officer of the House of Lords, is the highest judicial authority in England, and, together with the six law-lords, constitute the highest court of the realm. Though the judicial committee of the Privy Council consists of others besides these seven lords, its work is actually performed by the latter. In the United States the Senate tries cases of impeachment preferred by the House of Representatives. The Senate is the high court of justice in France.

The upper house in certain countries has some executive functions. In the United States appointments of ministers, judges of the supreme court, ambassadors, councils, and other such officers made by the president require ratification by the Senate. In France the Chamber of Deputies may be dissolved by the President with the consent of the Senate. But convention has worked against this practice, and so the popular house enjoys practically a fixed term of years. In both the United States and France, the upper chamber is exceptionally strong, enjoying almost the same power as the lower house. While the American Senate cannot initiate money bills, it can amend them. It exercises more influence in foreign affairs than does the House of Representatives. On account of its maturity of experience, longer term of tenure, its continuous nature, smaller size, connection with the political machine, and the powers conferred upon it by law, it enjoys greater reputation in the country. In France, the lack of any strong party organisation linking the two chambers, and the bad conduct of the Deputies,

have made the Senate strong. It has such great influence that no cabinet dares to flout it : and as a matter of fact every cabinet includes an average of three or four members from the Senate. It has the power to accept, reject, reduce, or increase the credits voted by the Chamber.

Legislative Procedure

Law-making in modern times is not an easy process. It requires the service of expert draftsmen, and careful consideration of the general principles of the bill, as well as the details, clause by clause. In Great Britain, a bill has to go through the first reading, second reading, committee stage, report stage, and third reading. In order to prevent the dilatory tactics of the opposition, and to save the time of the House, recourse is had to 'guillotine' and various types of closure.

Political parties and 'pressure groups' exercise much influence on the course of legislation. Candidates have to promise to support the programme and policy of their party before they are officially accepted. At times groups of voters interested in some scheme or other obtain the written promise of a candidate as a condition of their support. In some constitutions, such as the state constitutions of the United States, when a legislator loses the confidence of his electorate in part or in whole, he may be obliged to stand for re-election by a protest known as recall before his term is over.

The power of parties and 'pressure groups' and of public meetings is so great today that the old question whether the representative is a mere delegate, or one who can use his discretion, has lost much of its force. According to certain thinkers, the representative is only a human telephone, who has to record truthfully whatever his electorate wishes him to record. In this extreme form, the theory is unworkable. It is not only derogatory to the self-respect of an individual, but also one cannot foresee all the contingencies which may arise after the election is over. Besides, a representative has a duty to his own constituency as well as to the nation at large ; therefore, he should be prepared to consider all sides of the question as presented by other representatives and by different parties.

While there is no general rule regarding the circumstances when it should be obligatory for a representative to resign, it is generally agreed that he should resign and seek re-election when he changes his party, or adopts a line of conduct or policy totally opposed to the express wish of his constituency, or violates his election pledges.

Similar considerations apply also to a government in power in the parliamentary system. Finer discusses three circumstances in which dissolution is considered advisable in England :

(1) when it is proposed to launch upon a new policy of fundamental importance as Baldwin did in 1923 when he wanted to introduce protection as a remedy for unemployment after Bonar Law, from whom Baldwin had taken the premiership, had promised at the General Election not to raise tariffs ;

(2) when a government sees convincing signs that it is no longer trusted by the country ;

(3) when the position of parties is such as to produce a deadlock, preventing necessary legislation from being passed, and when severe criticism makes it impossible for the government to maintain itself in power with dignity.

The Committee System

Modern legislatures do much of their work through committees. In the United States all business in Congress is done by means of committees because of the separation of the executive and the legislature. The Committees deliberate in private. While both parties are represented on them, the majority party has the larger share, and the chairman belongs to that party. There is a tendency for the members of the party to act together. Members of the Cabinet are sometimes asked to appear before these committees, but their advice need not be accepted. The chairmen of some of the important committees occupy in effect the position of ministers such as the chairmen of the committees on Ways and Means and on Appropriations. A similar system obtains in France, too, where the *rapporteur* of a commission can act as a rival to the minister even in financial matters. Under this system the chamber controls the administration as well as legislation. The chairmen of committees in the British House of Commons do not have the same place of prominence as in Congress. The ministers overshadow them on the floor of the House.

Duration of Parliament

There is no cut-and-dried answer to the question of how long parliaments should sit. In general, it may be said that the duration should be short enough to keep the representative close to the people, and

long enough for the representative to gain experience, and not subject the people to frequent elections. In their zeal for popular control, the American people have made the term of their lower house very short in duration. One of the reasons for the comparative weakness of the House of Representatives is that representatives are elected for terms of only two years. In England, France and Germany a statutory period is laid down for the duration of the lower chamber, with the provision that it may be dissolved earlier under certain conditions. The statutory period of five years for the British House of Commons is really too long as the house is likely to get out of touch with the wishes and desires of the electorate. Three years, on the other hand, as in the case of the provincial councils in India under the 1919 Reforms, is too short. A four-year period with the right of earlier dissolution seems best for parliamentary governments. In Great Britain the Crown dissolves parliament, but the authority for dissolving it is located in the cabinet.

As regards second chambers, leaving aside hereditary bodies, bodies which are directly or indirectly elected or bodies which are partly elected and partly nominated, as the provincial legislative councils of India have been, should not last for more than five years. Second chambers which are continuous bodies may last six years, one-third retiring every two years, as is the case in the United States. The French practice of members sitting for nine years, one-third retiring every three years, does not commend itself to us. Mr. S. S. Iyengar, quoted above holds that no member should be eligible to be a representative of the people in any legislature more than twice, in as much as it leads to professionalism in politics and encourages the operation of mercenery motives. Such restrictions, Mr. Iyengar believes, 'would prevent staleness and that dulled sense of responsibility and the tendency to run in grooves which are so conspicuous now.' Over against this point of view something can be said for experience and continuity in office. Besides, if a person is allowed to be a representative for only two terms, that will effectively shut out the non-leisured classes, and those who look forward to an honourable career in politics. The problem is to weed out the ineffective and hopelessly selfish and docile members of the legislature.

SALARY OF LEGISLATORS

Most modern governments pay salaries to their legislators. In the

United States, both senators and congressmen are paid $ 12,500 each per year. In France, too, members of both houses are paid. In Great Britain, since the advent of Labour (1919), members of the House of Commons have been paid. Mr. S. S. Iyengar thinks that this practice of payment is pernicious on the ground that it makes many of the legislators servile to the party. They look to pay rather than to service, throwing aside their convictions for the sake of an emolument. On the other hand, it must be said that if all classes of citizens are to carry their proper share in the work of government, payment for service rendered is the only logical principle to follow. At the same time the salary paid should not be so large as to rule out motives of selfless service. The true reward for work in government, in all its branches, is the satisfaction of rendering public service, and the privilege given to one of moulding the destinies of millions.

Privileges of Legislators

Certain privileges are usually extended to members of the legislature in all countries. In their original form they were won by the British Parliament as the result of a struggle with the king. The important privileges are freedom of speech, and freedom from arrest for civil causes. Nobody can be punished for what he says on the floor of the house. This does not mean the use of unparliamentary language which is regulated by the Speaker of the House, nor does it mean endless speaking, which is restricted by rules relating to closure and 'guillotine'. Usually for 40 days before and 40 days after the legislative session, a member is given freedom from arrest in civil suits. In the United States this immunity extends to the period when the members attend the house and in going to and returning from the same. It does not include immunity from the service of summons in a civil suit.

Relation between the Legislature and the Executive

This takes four different forms. (1) According to the British model, the cabinet is the steering committee of Parliament. It regulates the time, the policy, the law, and financial burdens of Parliament. (2) In the French model, which is also of the parliamentary type, the cabinet is entirely dependent on the legislature even for its existence. The fate of the ministry depends upon the whims of the

legislature, which has no settled principles in offering its co-operation or non-co-operation. (3) In the Swiss model, the executive is non-partisan and collegiate and enjoys a fixed term. If its measures or policies are turned down by the legislature, it does not go out of office, but makes the necessary adjustments to the legislature. (4) In the American model there is no legal relationship between the President and the House of Representatives. The legislature and the executive have no vital points of contact for close co-operation, but have several points (especially as regards the Senate) where they can come into clash with each other.

The Executive

The executive plays such an important part in the modern State that very often it is described by the inclusive term 'government'. In non-democratic States, the executive authority is all-in-all. Even in democratic countries it exercises much greater authority than is generally believed. Finer says that the executive is the residuary legatee in government after other claimants like Parliaments and the law courts have taken their share. It performs many functions besides the execution of laws as laid down by the legislature and interpreted by the courts.

The Nominal Executive. It is usual to distinguish three aspects of the executive. These are the nominal or ornamental executive, the political executive, and the permanent executive. In England, the nominal executive is the monarch, the political executive is the Prime Minister and his Cabinet, while the permanent executive is the administration. In the self-governing British Dominions it is the same, except for the fact that the king is represented by the Governor-General. In the United states the line of demarcation is not so clear. The President is the chief of State as well as the political executive and performs several administrative functions. Several of the appointments which he makes are limited to his term of office. In France, the nominal executive is the President, but on account of the fact that he is elected for a term of 7 years and is often a party-politician, he does not command the same respect as the British King. The German President under the Weimar constitution occupied a place midway between those of the American and French Presidents, although he tended to approximate to the position of the latter.

In countries where the parliamentary system of government

prevails, the nominal executive has little to do with the actual governance of the country. While government is carried on in his name, all his acts have to be countersigned by a minister, who is responsible to the cabinet, to the legislature, and to the people at large. Many of the functions performed by the nominal executive are ceremonial in character, as in the case of the King of England. He summons Parliament, prorogues and dissolves it, but all this is done in accordance with the arrangements made by the ministry of the day. The king is a titular sovereign. He reigns, but does not govern. It is true that he does play some part in the choice of the Prime Minister, especially when there is more than one recognised leader of a party or when no party has an absolute majority in the lower house. But even here his discretion is restricted to narrow limits. No ministry has been dismissed by the King since 1784 although he has the legal power to do it. The power of veto has not been exercised since 1707. The force the king has in the country is the result of his influence and the non-party position occupied by him, and not the result of authority directly enforced by him. He breeds a respect for government and a readiness to obey laws. His constitutional rights are, in the words of Bagehot, 'the right to be consulted, the right to encourage, and the right to warn.' As far as the British Empire is concerned, he is the visible symbol of unity and the most important link which holds together countries and peoples scattered over the different parts of the world.

The nominal executive in France is the President, who is elected for a term of 7 years by the two houses of legislature sitting together for the purpose. In theory he has all the powers of the American President except the veto, as well as many powers which belong to the king in England. But in actual practice he neither reigns nor governs. As has been well said, he is a prisoner in an iron cage. Every act of his has to be countersigned by a minister, who in turn is dependent on parliament. Therefore, the real governing authority in France is parliament, and not the President. The only function which he can perform without the consent of a minister is to preside over national festivals. He is a mere figurehead and Parliament can compel his resignation before the expiration of his term, as happened in the case of Millerand. He can be impeached for high treason by the Chamber of Deputies and tried by the Senate.

The nominal executive in Germany under the Weimar constitution was the President. Unlike the French President he was elected by the

people who also had the power to recall him. He was given wider powers than those enjoyed by the French President. He could submit to a popular referendum bills passed by the Reichstag but which did not meet with his approval. He had no power of veto. He could also declare a state of siege, suspend various constitutional rights of the citizen, and govern virtually as a dictator. In France, on the contrary, a state of siege can be declared only by the legislature. Whereas in France the President can dissolve the lower house only with the consent of the Senate, the German President can do it on his own authority. This power, however, did not mean much in practice, as the acts of the German President, like those of the British King and the French President, required the countersignature of some responsible minister. The legislature could not reduce him to a position of subjection and compel him to resign, as in France. What it could do was to suspend the President by a 2/3rd vote of the popular house, and submit him to popular recall. If the popular recall resulted in a vote of confidence in the President, the Reichstag was to be dissolved and a new house elected, the President himself getting another term of office, presumably 7 years. He could be impeached by a 2/3rd vote of the Reichstag, and tried before the supreme judicial court for 'wrongful violation of the constitution of laws of the Reich'.

The Political Executive. Turning from the nominal to the political executive, we find at least four distinct forms: the English, the American, the Swiss, and the French. In England, the Prime Minister and the Cabinet constitute the political executive. They can remain in office only so long as they command the confidence of Parliament. They are members of one or the other house of the legislature and play a leading part in initiating legislation. They are also administrative heads of departments and, in that capacity, are responsible to Parliament not only for policy but also for the details of administration. They work together as a team and, in their relation to Parliament, stand or fall together. The Prime Minister is not the master of his Cabinet. In this respect he is quite unlike the American President. He is the first among equals and is responsible to the king and country for the work of the Cabinet as a whole. It is his business to act alone or with the other members and to make the necessary adjustments.

The British system of government works for smoothness and harmony between the executive and the legislature. By their personal day-to-day contact with parliament and their responsibility to it, the

Cabinet ministers are kept in the strait and narrow path. Whatever praise or blame they deserve is administered to them at the time it is deserved, although the general election is the real testing time. Parliament in turn cannot afford to be irresponsible because the Cabinet can always threaten it with dissolution before its normal term of five years is over and can actually carry it out. In spite of all these merits, what we find in actual practice is that when the party in power has an overwhelming majority in the Commons, it tends to become indifferent to the criticism of the opposition and to public opinion in general. It even becomes lethargic and self-satisfied resting on its oars.

Summing up the importance of the British Cabinet, Finer writes : 'On the whole... the British Cabinet system offers quick, vigorous, thoughtful and responsible leadership; it is controlled, but not stultified; threatened but not executed; questioned, but not mistrusted; politically partisan, but not personally malicious; restrained as much by the spirit of responsible power as by its institutions and sanctions; and Janus-like, it looks at once to the people and to the Senate *(20 : 994)*'.

In the American system of government, the President is the political as well as the ornamental executive. Even today in form he is elected by a body of electors representing the various states in the Union. In actual practice, however, he is popularly elected. His term of office is four years, and he cannot be removed before that time except for treason. He is *not* a member of the Legislature, and so whatever legislative programme he wishes to carry through he can do only with the help of individual legislators or committees of the Congress. He also sends periodical messages to the Congress outlining his policy and legislative programme. In the nature of the case, this is an unsatisfactory method, and is conducive to lack of harmony and friction between the executive and the legislature. The President is almost entirely independent of the legislature. He possesses the power of suspensive veto, which is not used unless there is reason to think that there is popular support behind the action of the President. When the party which has the majority in the legislature happens to be different from the party to which the President belongs, there is endless trouble as under President Truman in 1946. Good measures are at times thrown out by the legislature, in order to discredit the President.

The President nominates his own Cabinet ministers who are directly responsible to him and not to Congress. They are not members

of the legislature, and as such their responsibility is to the President alone. In the absence of Parliamentary Questions and Answers or Interpellations, which are a prompt and effective way of checking administrative irregularity and of eliciting information on matters of current importance, the American Congress depends upon resolutions of enquiry, which are a round about way of securing the desired end.

In spite of the fact that the President's power is somewhat weakened on account of his lack of contact with the legislature, he is one of the strongest political officers in the world. Wilson considered 'the office to be almost unlimited in its influence. As the executive or administrative head of the government, as the leader of his political party, and as the guide of the nation in legislation and policy-framing the President enjoys wide powers and influence. He is the only one who can be regarded as the spokesman of his country and the platform from which he can address the country is the national platform. In times of emergency he is given widepowers.'*

The Swiss executive is indeed of a very unique kind. It consists of a board or council of 7 members elected for a fixed term of three years by the two houses sitting together. It is controlled by the legislature, and there is no question of resigning because of 'no-confidence' motion or vote of censure. If the legislature does not approve of the policy or measures of the Council, the Council makes the necessary adjustment and goes on with its work. It is not a party government and there is no prime minister at the head of it. One of the seven is elected annually as the President. He is only a chairman and is not the 'first among equals' as the British Prime Minister. He has no more power than his colleagues. He performs the ceremonial duties of the executive. The work of the Council is divided into departments and each member is in charge of a department. Since the final control of the Council does not belong to a single individual, the Swiss executive council is usually described as a collegiate or plural executive. Although a plural executive generally means lack of unity, direction, and shifting of action, the people, for long accustomed to plural executive in their cantons, have made a success of the Council. Besides, the Swiss temperament does not run along strong party lines.

* According to Lindsay Rodgers, legislation which was the President's minor role has become his major role. He is now the chief legislator and the country judges him on the basis of his success as a legislator rather than his success as an executive.

The French executive is a parliamentary executive. On account of the group system it is almost always a coalition of some kind and is more dependent on the legislature than is the British Cabinet. The French ministers have the right of entry to both Chambers and may speak in either. French ministries are notoriously unstable, the average life of a ministry between 1878 and 1928 being nine and a half months. In the words of Finer there is no ministry in France ; there is only a collection of ministers. And these have no real administrative control on account of their precarious tenure. The commissions play a large, and even a rival, part in the legislative, financial, and administrative work of government. The Council of Ministers presided over by the President deliberates on *policy*, while the Cabinet presided over by the Prime Minister deliberates on *tactics* (*20 : 1063*).

The Governor-General of India and Governors of the Indian Provinces under the 1935 constitution were in a totally different category from their counterparts in the British Dominions. They were far from being nominal executives, possessing as they did powers which they could exercise at their discretion or individual judgment, in addition to being the custodians of the interests of certain classes of peoples and of public officials.

Mr. S. Srinivasa Iyengar advocated a non-party political executive for India, elected by the legislature. Some others have wanted an executive representative of the different parties in the legislature. In our judgment, neither a non-party nor an all-party executive will really be a satisfactory solution. An all-party executive will mean continuous conflict and friction both within the Cabinet and outside. It will mean lack of unity and cohesion, vacillation, and constant wrangling. As for a non-party executive, it seems to be outside the range of practical politics. Accustomed as we are to British parliamentary tradition, the safe course will be not to launch upon untried and novel experiments.

Single and Plural Executive. It is agreed by all reputed thinkers that a single executive is preferable to a popular executive. As Napoleon has well said, one bad general is better than two good ones. In ancient Athens, the executive power was broken up into fragments. The Romans for a long time had two consuls with no clear division of powers between them so that one could veto the actions of the other. In modern times, Switzerland alone has a plural executive, but even there, one does not find an overlapping of powers and functions among the members of the executive council. The Commission form of muni-

cipal government in the United States, which divides responsibility among the commissioners, is being replaced by the City Manager type, where there is one strong city administrator.

Plurality in the executive means a division of responsibility. It tends to conceal faults and militates against promptness of decision and singleness of purpose. It lacks unity and energy. In its favour it may be said that it is a check upon the abuse of power and the possibility of a *coup d'etat.* It may also bring to the service of the State a higher degree of ability than is possible under the single executive. But the fact that it lacks unity, directness, and swiftness of action is enough to condemn it. It is possible, however, to combine the principles of single and plural executive. Modern administration is so complex that no individual, however gifted he may be, can be an expert in every branch of administration. What is wanted is responsibility at different levels of administration working up to a single executive at the top.

Tenure of the Executive. In the case of a hereditary executive, tenure is for life. The question concerns elected or nominated executives, whose tenures at present vary from 1 to 7 years. In a majority of the American states the governors are elected for 2 years. The President is in office 4 years, while the French and German Presidents are given a long period of 7 years. In Great Britain and the Dominions the maximum period is five years, subject to the confidence which the Cabinet commands in the lower house and to earlier dissolution. In India under great Britain the Governor-General and the Governors were appointed for 5 years.

Under modern conditions a short tenure of one to two years is worse than useless. It is detrimental to a continuity of policy. The executive is not given enough time to gain experience or to plan in a large way and execute big schemes. Frequent elections have a disturbing effect on public life. Very often they lead to abuse and corruption. The executive is placed at the mercy of the people, especially when it is entitled to seek re-election. It becomes weak and vacillating and is afraid to act boldly and independently.

A period of 7 years is, on the other hand, too long a period for an elected executive, even for a nominal or ornamental executive. If the executive is to play a ceremonial part, the tenure should be short so that the ambitions of many may be satisfied. From this point of view the annual election of the Mayor of Madras has something to commend it. For political executives as well as for many nominal executives a

period of four to five years seems to be the proper duration. It is interesting to note that among the framers of the American constitution, Hamilton advocated good behaviour for the President.

Whether the chief executive should be eligible to succeed himself is a debated question. In India the Governor-General and the Governors were seldom re-appointed to the same or similar posts. In the U. S. A., according to convention, the President is eligible for re-election only once, but this convention was set aside by the election of President Roosevelt to four consecutive terms. The present constitutional arrangement is that no President can be re-elected more than once continuously. In favour of re-election it may be said that 'it secures the continuance of good policy'. Against it, it is said that it leads to pandering to the public, the executive being too timid to act independently. In general, what we find is that a selfish individual will behave selfishly whether he is eligible for office only once or many times. The question really to decide is whether a tried chief executive is a man of outstanding ability, still in full possession of his powers with a determination to carry through much-needed changes for progressive programmes and policies. When the electorate comes by such an individual there should be no legal restriction to electing him as many times as the people choose.

Powers and Functions of the Executive. The legislature expresses the will of the State, and the executive carries it out. Garner classifies the powers of the executive under five heads. These are the diplomatic power, the administrative power, the military power, the judicial power, and the legislative power.

(1) The diplomatic power includes the conduct of foreign relations. The executive appoints diplomatic representatives to foreign States and receives representatives from them. This latter power is construed to mean the right to recognise or the refusal to recognise the independence of foreign States and their governments.

Treaties and other international agreements are concluded by the executive alone or in conjunction with one or both houses of legislature. In order to secure secrecy, the legislature is kept out of the negotiations, at least in the early stages. This policy was severely criticised in England during and after the Great War of 1914-18. It was said by some that the secret bungling diplomacy of Great Britain had led her into war with Germany. The Labour Government was willing to place all treaties before Parliament for its approval. World War II diplomacy displayed considerably greater frankness and

openness, with Great Britain and the United States acting as a unit. The functioning of the United Nations has gone far to break down erstwhile secret unilateral negotiation, despite the fact that both the West and the Soviet Union have diligently sought, by open or closed channels, to secure allies for themselves.

In Great Britain even to-day the treaty-making power is largely in the hands of the executive. Parliament has no share in it except 'where legislation may be necessary to perfect the treaty or carry it into effect'. The executive both negotiates and concludes treaties. In many of the other States, ratification by the legislature is required. In the United States certain classes of international agreements, such as reciprocal trade agreements, may be concluded on the authority of the President alone. As regards other treaties, the rule is that they be ratified by the Senate. This power has been interpreted by the Senate to mean not only the right to ratify or reject the draft submitted to it, but also to amend it. The House of Representatives has only an indirect share in treaty-making through the power of the purse. It may refuse to sanction the appropriations necessary to put the terms of a treaty into operation. It may also refuse assent to treaties which deal with the regulation of foreign commerce. In the German Republic, treaties and alliances, except minor agreements, required the approval of the lower house. The practice in France is for ratification by both House of most classes of treaties. The houses have the power only to approve or to reject treaties, but not to amend them. In Switzerland, provision has been made for submission to popular referendum of treaties of more than 15 years' duration. In the United States, there is a proposal to substitute for the present practice ratification by both Houses by a simple majority.

(2) The administrative power means the execution of the laws and the administration of the government. In some countries this latter power is exercised in a detailed manner, and in others in a general way. The administrative power of the executive is described by some as Internal, and by some others as Home powers. It includes financial, commercial, agricultural, and educational administration. In France, a useful distinction is made between the *political* or governmental functions of the executive and the purely *administrative* functions. In many States appointments made by the executive are to be ratified by one or other of the two Houses. In the United States they require ratification by the Senate, but the president alone has the power of

dismissal. Ordinarily this power of appointment by the chief executive extends only to the appointment of high political, judicial and military functionaries. In Czechoslovakia, even university professors are appointed by the chief executive. In the states, cities, and countries of the United States a great many public offices are filled by popular election. In Switzerland, on the other hand, choice by the legislature is a common practice.

As for the power of direction, we find that it varies in different States, and sometimes in the same State itself. In countries where the monarchical tradition has persisted, the power of the Ministry is very great. In the United State the President's power of direction is often restricted by legislative acts. He has, however, the power to issue instructions and order to departmental heads. In great Britain, the permanent civil service works in close contact with the Ministry.

(3) *Military Power.* In countries with the monarchical tradition like England, the military power of the executive includes the right to declare war. In France, the assent of both houses of legislature is required for the declaration of war. In the United States the Congress alone can declare war, but in the conducting of foreign relations the President may bring the country to such a pass that declaration of war becomes inevitable. The President has the supreme command of the army, navy and air forces. In times of emergency he may declare martial law and suspend the constitutional right of citizens, including such an important right as the writ *of habeas corpus.* He can suppress newspapers. During the World War a series of Congressional Acts practically gave him dictatorial powers. Similar powers were conferred upon the executives of other belligerent countries too.

(4) *Judicial Power.* One of the important powers of the executive under this head is the right of pardon or clemency. Montesquieu considered it as quite out of place in republics. But considerations of justice and humanity demand that in every constitution, whether monarchical or republican, there be room for pardon because of the imperfections of law and the too rigid administration of justice. The existing law and its processes which the judge applies may be defective or the extenuating circumstances under which the crime was committed may not have been fully considered or new facts may have come to light since judgment was delivered. In all these cases justice demands that a condemned person have the benefit of the doubt and the person who can best exercise this prerogative is the

supreme executive. In Great Britain this power is exercised by the Crown on the advice of the Home Secretary. In many of the component states of the United States the Governor is assisted by an advisory board in the discharge of this function. According to many constitutions, the right of pardon cannot be extended to the offence of impeachment. The American President has the power of pardon before as well as after conviction. He can remit fines and forfeitures, grant reprieves and commutations, and exercise the right of amnesty to large numbers of persons convicted of crime.

Under democratic constitutions departments of government acting under the general supervision of the executive are given wide powers of a semi-judicial character. Thus the Ministry of Health in England in the exercise of its administrative functions can impose fines, recover costs, and the like.

(5) *Legislative Power.* In all constitutions, both the legislature and executive have control over each other. In parliamentary countries the executive has the power to summon, open, adjourn, and prorogue sessions of the legislature. This power of the executive is limited in the presidential systems of government, where regular sessions of the legislature meet automatically. In parliamentary constitutions the executive has the power to dissolve the legislature and call for new elections; it also has a ceremonial opening. All this is found lacking in the presidential form.

The power of the executive in the sphere of legislation is strictly limited in countries with the presidential system of government. It consists in furnishing the legislature with information concerning the legislative need of the country; in recommending measures for its consideration; sometime, though rarely, in the initiation of legislative projects, in approving or disapproving its acts and in promulgating those which are approved (*23 : 726*).'

An extraordinary power of the executive in the presidential system is the power of veto. In the United States it is a suspensive veto, which can be over-ridden by a 2/3rds vote of each house. It is considered to be a check on hasty and ill-digested legislation In declaring his veto, the President is required to state his reasons for dissent, and the legislature is given an opportunity to reconsider its decision. In France the power of suspensive veto is practically a dead letter.

In most modern States the executive is given the power of subordinate legislation known as the Ordinance power. This power takes the form of decrees, orders, rules, and regulations, some of

which require parliamentary approval. The usual qualification in the exercise of this power is that it should not modify or suspend statutory law but should be calculated to promote the execution of statutory law or fill in the details. Occasionally, extraordinary power is given to the executive in times of emergency to issue regulations for securing the public safety and the defence of the realm. This power is almost unlimited. Under it the country may virtually be placed under martial law.

German writers make a distinction between 'law' ordinances and 'administrative' ordinances. The effect of the former type is 'to create new law or to modify the existing law'. 'Administrative' ordinances, on the other hand, take the form of orders or instructions to the administrative authorities concerning the conduct or functioning of the services under them. Consequently they do not bind or affect the people directly.

Garner distinguishes three types of ordinances. The first of these consists of 'laws promulgated by the chief executive in pursuance of a general power of legislation conferred upon him by statute'. The governance of the French colonies by the decrees of the President falls under this category. A second class of ordinances comprises those which are 'issued by the executive in pursuance of legislative authority to regulate specific matters'. The third group is made up of ordinances issued upon the 'invitation' of the legislature to fill in details and pass regulations for the execution of a particular law. This form of ordinance is much in use in France, where Parliament contents itself with passing the general outlines of legislation, leaving the details to be supplemented by ordinance. Up to 1907 the supreme administrative court of justice refused to interfere with the legality of ordinances even when they seemed to contradict existing statutes. An important decision given in 1907, however, has brought the ordinance power under judicial control.

In the United States there is not much scope for ordinances since the Congress frames statutes in great detail. Nevertheless, there is a large number of presidential proclamations and executive orders and regulations governing the transaction of business in each of the executive departments, besides a large body of specialised rules, regulations, and instructions issued by the various departments.

In England the King no longer enjoys the inherent power of law-making by means of proclamations and ordinances. Nevertheless, the power to issue regulations may be conferred on the servants of the

Crown for the proper conduct of public affairs. Ordinances are made in the form of 'statutory rules and orders', and these have the same binding effect on the community as statutory laws. The filling in of details is often left to administrative departments, especially in such matters as education and public health.

Tests of a Good Executive. The tests of a good executive are promptness of decision, unity, finality, and sometimes secrecy of procedure. In the very nature of the case, the executive should be small in size. Otherwise quickness of decision and promptness of action become impossible. It is here that modern dictators scored over democracies. It is a significant fact that in times of emergency the American President is given extraordinary powers. Such powers were given to the Governor General of India for the duration of the war. In England a War Cabinet of six was formed to ensure promptness of decision and action.

Immunity of the Executive. From judicial process immunity of the executive is considered to be necessary in the interest of good government. In England the theory is 'the king can do not wrong'. The American President is not subject to the jurisdiction of the ordinary courts during his term of office. For his criminal acts the Senate may try him, acting as a court of impeachment, and remove him from office, if found guilty. After that he may be tried for criminal acts by the ordinary courts. During the term of office the President cannot be arrested or compelled to appear in person before a court or obey any judicial process. Such immunity was enjoyed by the Governor-General and Governors of India too.

E. The Civil Service

1. Definition and History

The Civil Service constitutes the permanent executive in the modern State. While the Parliament, the Cabinet, and the President may reign, it is the civil service which really governs. Doctrines of popular sovereignty, parliamentary supremacy, and cabinet control have a theoretical value to the academic students of political science. But the doings of administrative officials concern him as well as the ordinary citizen in his daily life and contacts.

Finer defines the civil service as 'a body of officials, permanent, paid and skilled'. All these features are essentially modern in character. For a long time, even in some of the advanced States of the world,

the task of administration was performed by amateurs in the intervals of their occupations. This was the case in England up to the end of the eighteenth century, but since then public service has become a skilled profession.

The civil service is so called in order to distinguish it from military and judicial services. There is evidence to show that some form of civil service existed in ancient Egypt both under the Pharaohs and the Ptolemies. Ancient Athens did not possess a professional civil service on account of its extreme democratic theory that A was as good as B for public service. Offices were for the most part elective. Sometime the system of election was combined with the system of lot. Republican Rome, too, like Athens, had no civil service. But Imperial Rome was obliged to engage the services of special classes of administrators. Members of the aristocratic classes alone were preferred for responsible administrative posts. Inferiors were employed as spies and subordinate officials, and as chief officials in the remote corners of the Empire. Similar bureaucracies existed in ancient China and India, too.

Alongside of the various guilds and crafts, public service as a profession was developed during the Middle Ages in Europe. The emphasis was upon the honour and prestige attached to public office rather than upon emoluments. Recruitment was more from the middle classes and less from the feudal aristocracy.

In modern times Prussia has been a pioneer in organising public services. Infinite care was bestowed in that country upon the proper methods of recruitment and training of public servants, and elaborate rules were framed to make the service as efficient and useful as possible. Even to-day Germany has the best system of rights and guarantees for civil servants. On the side of liabilities, it must be said that the German services still carry with them an authoritarian tradition, but everything possible was being done, until the advent of the Nazis, 'to smooth the rough edges and convert officiousness into good service'. The Bourbon kings of France did something to build up public-service traditions in Europe, but appointments and dismissals remained arbitrary.

One of the finest public services in the modern world is found in England, dating from the middle of the last century. Finer describes the British Civil Service as the envy of the world. It combines 'technical efficiency and humane serviceability as no other civil service does.' In the words of Graham Wallas: 'the creation of this Service was

the one great political invention in nineteenth century England.'

In its origin and development, it is a necessary counterpart to the amateurishness of the British cabinet government. In nine cases out of ten the British Cabinet Minister who is placed in charge of the administration of a department knows little or nothing of the inner working of the department. He brings to his task a fresh mind free from preconceived notions and bureaucratic inhibitions, while the civil servant brings expert technical knowledge. A combination of the two results is good government. But writers like Lord Hewart, Ramsay Muir and C. K. Allen condemn the system saying that it makes the permanent civil service too important. According to Ramsay Muir, in legislation, administration, finance, and enunciation of policy, the body which really directs affairs, though from behind the scenes, is the civil service. He is alarmed to find that bureaucracy thrives under the cloak of ministerial responsibility.

Whatever may be the element of truth in the above criticism, there is no gainsaying the fact that England is one of the best administered countries in the world because it has an efficient, dependable, and impartial civil service to attend to the day-to-day work of administration.

In India under the British rule administration played a very notable part. It was so very comprehensive in its activities as to include almost all that we describe under the term 'Government'. In addition to performing its legitimate task of administration, it had an important share in the enunciation of policy and the framing of legislation. The administrative officials in India were often described as belonging to a bureaucracy, meaning thereby that as a body they were accustomed to the exercise of irresponsible power, uninfluenced by public opinion. But this state of affairs tended to disappear with the extension of responsible government.

Conditions of public service in the United States began unsatisfactorily on account of the prevalence of the 'spoils system', according to which hundreds of civil service posts are filled at the end of every Presidential election by supporters of the victorious party at the polls. The person who was responsible for this policy of rotation of offices, and of giving a political colour to public offices was Andrew Jackson who, as President (1829-36), declared : 'The duties of all public officers are so plain and simple that men of intelligence may readily qualify themselves for their performance ; and I cannot but believe that more is lost by the long continuance of men in office than is

generally to be gained by their experience. No one man has any more intrinsic right to official station than another'. The result of what proved to be a vicious policy was inefficiency, partisanship, corruption, and bribery. The evil reached such a climax that in 1888 the country was forced to move in the direction of the principle of permanent civil service by competitive examination. Public service commissions were set up, but their usefulness was greatly diminished by making them representative of two main political parties in the country. Another wave of reforming enthusiasm spread over the country in 1905, but even that was not able to abolish the spoils system altogether. By 1916 more than half the civil service posts were filled by competitive examination. Today, except for some top officials in some departments, all government workers are under Civil Service and much is being done to weed out party politics and nepotism.

2. Recruitment and Training of Civil Servants

One of the most important questions to consider in evolving a sound type of civil service is recruitment and training. Till the middle of the last century, both in England and India, patronage played a dominant part. A Scottish member of the Board of Directors found posts under the East India Company for most of his 19 children. In his capacity as president of the Board of Control, Dundas sent out a great many Scotsmen to India. As late as 1858 John Bright said that 'England's foreign policy was nothing more than a gigantic system of out-door relief for the aristocracy of Great Britain.'

The evils of patronage became so great that some other way of selection had to be found. The first step with regard to the Indian Civil Service was to limit patronage by a qualifying examination and by a thorough training at Haileybury. In 1853 when the East India Company's Charter came before Parliament for revision, Macaulay secured the complete abolition of the patronage system and substituted for it the competitive system. He said : 'It seems to me that there never was a fact proved by a larger mass of evidence or a more varied experience than this ; that men who distinguish themselves in their youth above their contemporaries almost always keep to the end of their lives the start which they have gained.' Macaulay did not favour any technical or professional training for admission into the civil service. He insisted on mental alertness and capacity tested by competitive examination. Technique, he said, could be acquired later. What he wanted was a liberal rather than a specialised education.

The reforms of Macaulay in India bore fruit in England in the report of Northcote and Trevelyan in 1853. They too recommended competition and the elimination of party politics in the selection of candidates. The recommendations were given partial effect in 1855 by an Order-in-Council and the first Civil Service Commission was created in the same year. Other reforms were adopted in the succeeding years.

According to the system prevalent in England and India to-day, recruitment for the most part is by open competition supplemented by an interview, both conducted by a Public Service Commission. For recruitment to certain departments, the competition is 'limited', as in the case of the Foreign and Diplomatic Service in England. The *viva voce* test which was established in England in 1917 is given a prominent place in all competitive examinations.

Civil servants as a rule are recruited at an early age because of the pliability and receptiveness of youth to new ideas. The Civil Service Commission in England consists of three members directly appointed by the Crown by an Order-in-Council. This means in practice appointment by the Cabinet after consultation with the highest authorities in the Treasury. It is free from outside, and especially political, influence. Its decisions are never questioned. It is considered the guardian of honest efficiency. It does arduous work. In 1935 it filled nearly 23,000 posts. Similar Commissions function in India both at the centre and in the state governments.

After selection the successful candidates were required to undergo a year's probation in England, during which period they were to study some special subjects and some of a general character—subjects such as codes and acts, history, vernacular, riding and hygiene.

At the end of the period of probation there was an examination. During the probationary period each British candidate received £ 300 and the Indian candidate £ 350 a year. Government paid the candidate's passage to India. Further examinations were held in India at the end of six months by the department concerned.

The age of recruitment in Germany before 1940 was even lower than in England and India. 'The weight is still given to learning in Germany, but the tendency is in the English direction (*i.e.* towards a liberal education)'. Stress was laid on a study of law and social sciences. A period of preparatory service has always been a part of the training given to German civilians. One chief criticism is that the German method devotes too long a time to preparation.

While the examinations in England are designed to test general ability, in the United States they test technical efficiency. For many appointments there is a qualifying examination, rather than a competitive examination with the result that the American Civil Service is not sought after by capable and highly educated men. For many classes of posts one does not require much more than 'the ordinary high school education, together with some practical efficiency'.

3. Conditions of Service

If the State is to secure the best possible service from its servants, it should provide them an adequate salary, and relieve them from the fear of insecurity and want, especially in old age. Security of tenure till the time of superannuation is a recognised rule in England and India. When a civil servant has successfully completed his period of probation, and passed what departmental tests there may be, he has nothing to fear so long as his work continues to be satisfactory, and he is in full possession of his mental and physical powers. Such security enables an individual to enter government service as a 'career service', giving to it the best years of his life. In the U. S. A. where civil service traditions are still in the making, it is not uncommon for civil servants to be on the look out for other, and more lucrative posts.

Salaries for public servants in England before 1940 were low compared with the abnormally high salaries and allowances in India. The maximum pay for administrative heads in England (About 40 of them) was £ 3,000 a year, although many of them could easily command £ 10,000 a year in the city. The Indian Collector received a maximum of Rs. 2,650 per month including overseas pay. But there was a number of posts 'above the time scale'—divisional, financial, and judicial commissionerships, the posts of provincial Chief Secretary, posts of Secretaries to Government of India, etc., the salaries for which post ranged from £ 2,700 to £ 3,600 a year. In a great many provinces the post of Governor was open to civil servants. The Madras civil servants were given a higher maximum since there were no commissionerships in that province. A civil servant, early in his career, could become a judicial officer climbing up to the High Court. He could become a member of the Board of Revenue, which was the final revenue court of appeal, or become a financial commissioner. A considerable number of special posts were open to him such as audit, customs, posts and telegraphs, political department, tariff board, membership on the public service commission, etc.

Overseas pay after the first four years or service could be turned

into sterling at the rate of Rs. 10 to the pound. A liberal pension was provided for at the time of retirement. The Indian Civil Servant could retire before time and draw proportionate pensior. He also enjoyed very liberal leave privileges.

Besides security of tenure, adequate salary, and liberal leave privileges, the civil servant should be given a reasonable chance of promotion, work suited to his capacities and protection in the faithful performance of his duties. In Great Britain manipulative and clerical services are distinguished from the executive and administrative services, and different types for entrance examinations are held for the two types of services. Superior services are recruited not only by direct recruitment but also by the promotion of the most capable from the lower grades. Since 1920 it has been possible for transfer and promotion from one department to another.

Promotion according to seniority is a sound policy for many situations. It at least saves considerable administrative inconvenience. But seniority alone is not enough. There should be opportunity for men of capacity to rise rapidly from one grade to another. Finer claims that the least amount of evil in State service is produced by the best classification of civil servants according to efficiency and by correlating efficiency with rises and falls in salary, promotion, demotion, and dismissal. The U. S. A. has made rapid progress in the technique of rating. The Report Form used by the various departments in England seeks to establish competitive records of past efficiency. The Report calls for information on knowledge (*a*) of branch and (*b*) of department, personality and force of character, judgment, power of taking responsibility, initiative, accuracy, address and tact, power of supervising staff, zeal and official conduct. It is true that personal equation is bound to play a part even in filling up a report of this kind, but still it keeps down favouritism at as low a level as possible.

The civil service is a silent and anonymous service. In the nature of the case, it cannot come out in the open and defend charges made against it. Such being the case, it is necessary to give to the civil servant the necessary protection for the faithful performance of his duties. France and other continental countries, recognising this fact, have set up special administrative courts for the trial of casts in which public officials are involved. In the English-speaking countries, on the other hand, the same system of law and the same system of courts obtain for both private wrongs and wrongs in which officials are involved, although Australia in recent years has departed from this

practice. They fail to recognise the public and, in some cases, the political character of the task entrusted to government servants. In this respect it seems to us that a great deal is to be said in favour of the Continental, as against the English system. Contrary to expectation, the administrative courts are far from lenient. They take into account the administrative side of the question, and have often given good judgments. The State accepts liability for the wrongs done by its servants.

According to Finer, the civil service in Germany has a well-defined body of right accorded to it by law and by the ultimate assent of the people. There are also ways whereby the civil servant can challenge any but the smallest amount of disciplinary measures against him.

The civil service is not only a silent service ; it is also subjected to strict discipline. In England particularly it is expected to serve whichever political party may come into power with equal respect and equal earnestness. In order to attain this end, civil servants are forbidden to take an active part in public political affairs. They are not allowed to stand as candidates, although they have the right to vote as they please. A great deal of political activity is allowed to civil servants in France. This is rather unfortunate. The Weimar constitution of Germany allowed civil servants to contest seats.

Practice varies on the question of the right of association and the right to strike which civil servants may claim. In Great Britain up to 1917, individuals and associations in the civil service could get their grievances redressed mainly by means of memorials which had to go through various hands before reaching the Head of the Department and finally the Treasury. The negotiations were all conducted in writing and personal discussion was almost entirely excluded. Since 1917, with the adoption of the recommendation of the Whitley Report for non-public industries, a modified form of Whitley Councils is allowed to civil servants in the lower grades, drawing a salary of less than £ 700 a year. England provides a special court for interpreting the clauses relating to the pay and working conditions of the civil servants under this category. But the final interpreter of the terms of the judgments of the courts is the Treasury. A civil servant in England has no legal action against his dismissal inasmuch as the ultimate interpreter of the Superannuation Rights is the Treasury, and not any law court.

If civil servants require to be protected against the public, the public in turn requires protection against the arbitrary use of authority

by civil servants. Such protection is provided by a system of checks and balances by certain legislative controls over administration, and by certain judicial controls, namely through the issue of such writs as mandamus, injunction, *habeas corpus*, *quo wa ranto* and *certiorari* which are orders by courts to public officers commanding them to do or not to do certain things. In this respect of affording protection to the public, Finer considers that France and Germany occupy the most enviable place, while England occupies the least enviable place, with the U. S. A. occupying somewhat of a middle position.

4. Function of Civil Servants

It is the business of civil servants to carry out the law entrusted to their care. In this respect they are literally the servants of the legislature and the supreme executive. What ever indirect share they may have in framing policy in their personal contact with the political executive, direct share they have none, at least in fully self-governing countries.

In the nature of the work performed, the British and Indian civil servants differ fundamentally. Though a collection of experts, the British civil service does not determine the political policy of the country. That is done by the ministry of the day. The Permanent Under-Secretary and his assistants give all the necessary advice and suggestion, but they do not dictate. Specialists are not consulted directly by the ministers. A weak minister may easily be led by the civil servant. But a strong man can always have his way.

The Indian Civil Service under the British, occupied an entirely different place. As Governors in most provinces, as members of the Executive and Legislative Councils, and then as Advisers to the provincial Governors, Indian civil servants exercised a decisive influence in the framing and executing of policy. After the Montagu-Chelmsford Reforms, and especially after the advent of provincial autonomy, this power was considerably curtailed. Speaking of the new type of Indian Civil Servants, Sir E. Blunt said : 'Where his predecessor gave orders he must advise.... The civilian who used to serve by ruling, must learn to rule by serving'. It is not too much to hope that in the not long distant future what policy-making power the I. C S. still possesses will disappear. Its chief function will be to advise and administer. Practice of sound parliamentary government requires that ministers decide the policy while officials carry it out faithfully whether or not they agree with it.

While the British civil servant spents most of this time at the desk

in the midst of files and folios, his counterpart in India had an extremely varied life. As district officer, he spent three to four months in the year in camping, establishing contacts with the people. He was a collector of revenue as well as district magistrate. He was 'the Government on the spot'. He was the *Sarkar*. Under him there were the sub-divisional officer, the deputy collector, the tahsildar, etc. He tried revenue and criminal cases and heard appeals from magistrates with second-and third-class powers.

Whether it be in India or elsewhere, pure administration is not the sole task of civil servants. They are given semi-legislative and semi-judicial powers. Officials of departments are empowered to make rules and regulations binding upon their subordinates and the general public. Some of these, especially in war time, take effect even before Parliament has given them its formal approval. The permanent executive fixes in detail the manner in which the requirements of parliamentary statutes are to be met and how the rights created under them are to be enjoyed. In the matter of delegated legislation, England stands midway between France and the United States. Summing up the causes for the increasing amount of delegated legislation given to administrative departments, Marriott writes: 'Partly owing to the increasing complexity of industrial and social conditions, partly under the subtle influence of Fabian Socialism, partly from the general abandonment of the principle of *laissez faire* and the growing demand for governmental guidance and control in all the affairs of life, partly from sheer despair of the possibility of coping with the insistent cry for legislation, parliament has manifested a disposition to leave more and more discretion to the administrative department (*Marriott*, Vol. II, p. 233)'.

As Marriott observes, while the delegation of quasi-legislative functions is convenient, legitimate, and even inevitable, it is liable to be abused. To avoid this danger, Marriott suggests three safeguards : (1) the power to which the authority is delegated should be in the most literal sense trustworthy ; (2) representatives of interests which are affected should be consulted ; (3) in every case the limits of the delegated authority should be defined. In the famous *Zamora* case of 1916, the Privy Council declared that the Crown had no power to alter the law of the land by Order-in-Council unless such power was specifically delegated by statute. The Supreme Court in the United States in the 138's set aside some of the provisions of the N. R. A. on the ground that the legislature had gone beyond its province in

giving too wide and unspecified powers to the executive, and had failed to lay down standards to guide executive actions.

Administrative departments in many countries enjoy semi-judicial functions, *e.g.*, the Inter-State Commerce Commission in the United States. They are given the power to investigate into the truth or justice of the complaints made by the public against the official acts of their subordinates. Thus the 'Income-Tax Commissioner alone is empowered to hear complaints raised by a private individual over the assessment made by a subordinate of the Department'.

Similarly, a high official of the Industrial Department decides cases of compensation to workmen in factories for injuries sustained in the course of their work.

One further question which merits our attention in connection with the work of administration is the chaotic way in which departments and their sub-divisions have been allowed to grow. If economy and efficiency are the touchstones of sound public administration, it is necessary that departments of government should be carefully organised so as to avoid overlapping and bring together closely-related departments under common control. Undue centralisation, as in France, as well as undue decentralisation, are defective. Integration offers a *via media* in that it calls for co-ordination at different levels of administration, working towards a final head.

The Machinery of Government Committee of 1917 presided over by Lord Haldane was in favour of differentiation according to service. It recommended a reorganization of the departments of government under I Finance, II and III National Defence and External Affairs, IV Research and Information, V Protection (including Agriculture, Forestry and Fisheries), Transport and Commerce, VI Employment, VII Supplies, VIII Education, IX Health, and X Justice. Some of the large departments would require more than one Minister. The Cabinet of the future should be a small one, comparable to a war cabinet, concerning itself with supervising and co-ordinating functions rather than with administrative functions.

A suggestion made by the Haldane Committee which received considerable attention was the need for a permanent planning or 'thinking' commission attached to each department of government or to administration as a whole, doing research into questions of administration and planning for the future so as to make the whole machinery of administration efficient, economic, progressive, and serviceable to the people.

5. Tests of a Good System of Civil Service

Public administration, unlike business administration, is not a money-making concern. Its chief aim is to render service wherever it is most needed. In doing that, civil servants must be fair to everybody. They should not favour one individual or one class of individuals above another. They must be guided only by the application of equal law to everybody. They should consider themselves servants of the people in the real sense of the term. One of the charges frequently levelled against the Indian Civil Servants was that they were supercilious and overbearing in their attitude to the public.

Finer holds that the civil service should possess life, inventive power, ability to serve the needs of the population and enterprise. A besetting sin of civil servants is to fall into a rut, to rise out of which they do not have the necessary disposition or ability. A certain amount of routine and red tape is no doubt essential in the management of public affairs, but it should not be allowed to occupy the foreground. Care for human values should be given the first place in all planning and execution of official tasks.

The civil servant should do everything possible to remove the attitude of fear and hostility which the public often has towards government servants in general. Speaking in general terms, Finer says : 'The public is hostile to the official, it is afraid of him, misunderstands him, occasionally admires him.' In England, says the same writer, the general public is on the whole mildly indifferent to the existence and work of the civil service. In India, the illiterate villager has a superabundant faith in the ability of the civilian to work wonders, coupled with a profound fear that his destinies are placed in the hands of the civilian.

While the administrator should act without fear or favour, he should not purposely defy public opinion because of his exalted position. In no circumstance should he usurp the powers of the political executive or of the legislature. He should rid himself of the temptation to become self-opinionated. He should not multiply correspondence, adore prestige, or adopt dilatory formalities.

Communal representation was insisted upon as a condition of a good system of administration in a country like India with its rival communal groups. All that needs to be said is that public administration should not become a plaything of politicians if its honesty and efficiency are to be kept unimpaired. Other things being equal, there should be a due proportion between the strength of any one

community in the country and its representation in the services. But it must be remembered that the right of the citizen to be safeguarded against inefficient and worthless officials is much greater than the right of every caste and community to have its mathematical percentage in the various services.

The duties of the civil servant in Germany, as stated by Finer, are:

1. The civil servant must discharge his duties in accordance with the constitution and the laws and obey the official orders of his superiors, in so far as they are not contradictory to the law.
2. He must carry out the duties of his office with the greatest sincerity and probity without regard to private advantage, with the greatest impartiality, with all industry and care. He must be specially on his guard against partiality.
3. He must keep punctually to the hours of arrival at and departure from his work.
4. Without claiming extra pay, he must be prepared to undertake additional duties or other duties to which his training and capacity fit him.
5. He must be truthful in his official doings. He must not pass over in silence important facts the disclosure of which is of concern to the Department.
6. Respect for superiors is demanded, outside as well as inside the office, even when the superior is objectionable in character and demeanour.
7. In their intercourse with the public, officials must always be courteous.
8. The civil servant must not allow insults to pass unnoticed, lest the Service should suffer degradation.
9. No official may take on any additional offices or employments, other than those for which he has asked and obtained permission of the appropriate departmental authority.
10. The civil servant must observe official secrecy.

F. The Judiciary

A country may have a very good legislature and an excellent executive, but if it does not have an independent and impartial judiciary, its constitution is not worth much. Protection against

arbitrary rule is a condition which every citizen expects a civilised government to provide for him; and a properly constituted judiciary is one of the best means by which this condition can be secured. It is for this reason that it is often said that the excellence of a country's judiciary is a measure of the excellence of its government.

I. The Importance of the Judiciary

That the judiciary has always occupied an eminent place in the thinking of people is proved by the fact that something of divinity has often been attributed to the judicial function. Justice is considered one of the divine attributes and the judge has been pictured as a blind-folded person who administers even-handed justice without fear or favour. In the olden days the function of the judge was considered a part of the function of the priest.

While people greatly value the importance of the judiciary, its evolution has indeed been slow. The kind of justice which prevailed in early times was a tribal conception of justice. It did not matter whether the guilty person was punished or not. The ends of justice were supposed to have been met when punishment was inflicted upon members of the offending clan or tribes. Very often the punishment inflicted was out of all proportion to the offence committed. It was, therefore, a distinct step forward when the idea of exact retribution, an eye for an eye, and 'a tooth for a tooth', came to prevail. A little later came the idea that compensation in goods or money known as *wergild* could be substituted for physical injury.

All through this period justice was personal and private. The aggrieved individual or tribe had to take whatever action it was possible to take. Besides, in many cases there was no way of enforcing a decision. A drastic remedy which was often resorted to was one of expulsion from the community, as seen in the sotry of Cain in the Old Testament. Fear of God and spirits of various kinds also played a part in keeping early man to the narrow and strait path.

Gradually there developed the idea of the King's peace. It first included 'bootless' crimes, *i.e.*, crimes for which atonement could not be made by money payment. Later on, theft and other such crimes came to be included under King's peace. Feudal lords and the Church continued to administer their own kind of justice for a long time, and it was not without a struggle that they gradually gave place to the King's justice.

In the modern State all crimes are crimes against the State,

although we speak of private law and public law. While various social organisations may use persuasion, moral pressure, and social ostracism in reference to their members in enforcing a certain line of conduct, they have no right to imprison people, award capital punishment or do the like. Justice is a function of the State.

The greatest enemy of an independent judiciary has been an all-powerful executive. Under the first two Stuarts in England endeavour was made to subordinate the judiciary to the executive and even some of the judges of the time were a party to this unholy endeavour. The judges were indeed to be lions, but 'lions under the throne' (Bacon). They were to be, in other words, the handmaids of the executive. The independence of the judiciary in England was finally secured by the Act of Settlement; and it was laid down that judges could be removed only upon the address of both houses of parliament.

2. Conditions required of an Efficient Judiciary

The first condition required of a good system of judiciary is independence. The manner in which a judge is appointed and the terms of service under which he works should all be such as to enable him to act in an independent manner. Fear of the executive or of the people at large should not influence him in any way in the performance of his duties.

Impartiality in the administration of justice is as important as independence. It is commonly said that in England 'there is one law for all' and that 'all men are equal before the law.' Differences in wealth, influence, and social position should not weigh with the judge. Under no circumstances the executive should be allowed to dictate to the judiciary the kind of judgment to give, especially when it is one of the interested parties.

Besides being independent and impartial, the judge should be learned and skilled in his profession. An incompetent judge is bound to reduce the popular regard for the judiciary. A judge should be absolutely incorruptible, upright and fearless in the discharge of his duties.

Passing from judges to courts, it must be said that justice should be swift and sure. To the attainment of this end, the number of judges should be large enough to prevent delays. In the United States it is said that justice is neither swift nor sure. There are so many loopholes in the law and its processes that it is possible for a clever lawyer or client to delay justice unduly, if not to thwart it altogether. If

the poor people are to benefit by the judiciary, it is necessary that justice be not as costly as it is today in many countries. The judicial process should be simple, direct, and inexpensive. While ample provision should be made for the correction of judicial errors by a well-organised system of appeals, everything possible should be done to prevent prolonged and vexatious litigation. Strenuous efforts should be made by courts to effect reconciliation and arbitration wherever possible. In this matter of the amicable settlement of disputes the lower courts in India might be instructed to play a usual part which they are not playing today.

3. Functions of the Judiciary

(1) The primary function of the judiciary is to apply the law to specific cases, both in civil controversies and in cases in which persons have been accused of crime. This function is not as easy as it may seem on the surface. There are many cases where the law is not clear, or altogether free from ambiguity. Therefore, the judge is asked to interpret the meaning of laws, and in so doing judges have built up a great body of 'judge-made' or 'case law'. In Anglo-Saxon countries, in dealing with cases which are not covered by statute law, judges declare what is the common law. In France, almost the whole body of administrative law has been built up by the decisions of the Council of State, the supreme administrative court of the country.

While precedents are not binding on future decisions, much respect is attached to them. Both lawyers and judges make use of them. In the Anglo-Saxon countries precedents are not merely evidence of the law, but are a source of law. In France, Germany, and on the continent generally, however, judicial precedents do not bind even the inferior courts.

Precedents, says Garner, are of two kinds; precedents which *create* law for the future and precedents which merely *declare* the pre-existing law. The latter are more numerous but less important. Another form of classification is the division beween *authoritative* and *persuasive* precedents. As the name itself implies, an authoritative precedent binds future judges. This is true in the relation between superior and inferior courts. Even an authoritative precedent may be overruled by the judge of a superior court if he considers it to be contrary to reason or law. A persuasive precedent is not obligatory and the judge gives to it such weight as he thinks it deserves.

(2) A second important function of the judiciary is the protection of the individual against the encroachment of the State. No special provision is made for this purpose in the English-speaking countries or in Belgium where the rule of law prevails, according to which there are the same laws and same courts for both officials and private individuals. What special courts there may be are subordinate to the ordinary courts. In France, Germany, Italy and other continental countries there are special administrative courts applying administrative law.

Controversy has raged over the question as to whether the rule of law is superior to administrative law or *vice versa*. A. V. Dicey is largely responsible for the exaggerated importance given to the rule of law and for the prevailing opinion in English-speaking countries that the rule of law alone can adequately protect the liberties of the individual against public officials. More intimate knowledge of the special administrative courts of France than was available in the days of Dicey has convinced thinkers that administrative courts and administrative law do not necessarily mean arbitrary rule. There is no solid foundation for the popular belief that in administrative courts justice is perverted for the sake of administrative convenience or in order to oblige those in authority. Judges of the administrative courts are not only well-versed in law but also have had administrative experience which enables them to take into account both the public and private aspects of a case in which State officials are involved. In the course of years they have become the protectors of the individual against the arbitrary and illegal acts of government and its administrative agents.

One respect in which administrative law is superior to the rule of law is that, in a country like France, the individual can sue the State and obtain an indemnity if he has suffered injustice at the hands of its officials. In England, on the contrary, the individual cannot generally sue the State. He has to sue the officer concerned for damage which may not be forthcoming if he is insolvent or is unable to pay. When some high official is to be sued, permission has to be sought by means of a petition of right, and this is not always easy to obtain.

A significant development in recent years is that both the rule of law and administrative law have undergone changes in the direction of each other, thus minimising the sharp differences between the two. As seen earlier, a great many administrative departments in

England such as Health and Labour enjoy semi-judicial powers, and in some cases there is no appeal to a higher authority. Continental administrative courts, in their turn, have become more and more judicialised with a definite procedure regarding evidence, judgment, etc. There is no country in the world where the public official is on a footing of absolute equality with the private citizen as regards his privileges and immunities. This being the case, it seems best to accept frankly the French view that the public official in the performance of his duties is in a different category altogether from the private individual in his relations with other private individuals. It is an English writer, C. K. Allen, who says: 'The remedies of the subject against the State in France are easier, speedier, and infinitely cheaper than they are in England today. It has become a maxim of constitutionalists, and a bulwark of French democracy that the *Counseil d' Etat* is the great buffer between the public and the bureaucrat'.

The Council of State, the supreme administrative court of France, is presided over today by a non-political head instead of by the Minister of Justice, as before. In some respects, says a recent writer. it is like the Public Service Commission in India, issuing rules for the civil services, investigating their grievances and hearing their complaints. The Council of State further exercises the function of judicial review over the ordinances and rules which do not have their source in the legislature.

(3) An important function of the judiciary in federal constitutions is the interpretation of the constitution and declaring invalid of statutes which are at variance with the constitution. As has been well pointed out, there are in the United States four kinds of laws possessing various degrees of authority. These are (*a*) the Federal constitution, (*b*) Federal statutes, (*c*) State constitution, and (*d*) State statutes. Of these the first prevails against all the rest.

The Supreme Court Judges are the guardians of the federal constitution. This does not mean that they scrutinise the constitutionality of every statute law before it can become operative. It is for the aggrieved party to bring the alleged violation of the constitution to the notice of the Supreme Court. As a recent writer observes: 'The court has no authority to interfere until its office is invoked in a cause submitted to it in the manner prescribed by law'.

The power of judicial review given to the Supreme Court enables the judiciary to act as a guardian of the constitution against the possible inroads of the Executive or the Legislature. On the whole

the system has worked admirably, in spite of the fact that there have been occasions when the class prejudices of the judges have contributed much to the rejection of essential social legislation under the pretext of defending the constitution. Thus, the Employers' Liability Act, Workmen's-Compensation Act, Minimum Wages Act, Act to Prevent Child Labour, etc. passed by the Federal Congress and approved by the President, have been at one time or another rejected by the Supreme Court, although today these acts have succeeded in becoming the law of the land.

(4) Other functions of the judiciary as summed up by Garner are (*a*) the issuing of writs and injuctions of various kinds ; (*b*) the pronouncing of declaratory judgments regarding what is right or what the law requires when such opinions are requested by interested parties ; (*c*) the giving of advisory opinion on questions of law when requested by the executive or the legislature ; (*d*) the adjudication of disputed cases of jurisdiction in federal constitutions ; (*e*) the appointment of certain local officials of the court, the choosing of clerical and other functionaries, the granting of licences, the appointing of guardians and trustees, the admission of wills to probate, the administering of the estates of deceased persons, the appointing of receivers, etc.

4. Organisation of the Judiciary

The judiciary is organised differently from the legislature and executive. As Garner points out: 'The judicial power . . . is exercised neither by a single magistrate nor by an assembly, but by a series of magistrates or collegially constituted tribunals usually hierarchically organised one above another with a supreme court of review or cassation at the apex (*22 : 780-1*).'

In the Anglo-Saxon countries, except in the case of the courts of an appeal, the usual practice is for each court to consist of single judge. In France, Germany, and several other European countries the collegiate principle generally prevails. Plurality of judges, it is believed, is a protection against arbitrariness. But it is very expensive. In Great Britain and the United States, the number of judges in the lower courts is relatively small.

Another difference between the Anglo-American and continental courts is that in the former judges go 'on circuit' from country to country, holding court in different places for the convenience of litigants. On the continent of Europe, on the contrary, courts are 'sedentary' or localised; and litigants are to go to them.

A valuable feature of the continental courts, when contrasted with the state courts of the United States, is that their judicial system is unified and integrated. It is highly desirable that all the state courts should be organised into one system so that there will be one great court with several branches under it.

In federal States, such as the United States, 'there are usually two separate and distinct series of judicial bodies, one to exercise national or general jurisdiction, the other local jurisdiction (*22 : 783*).'

Such diversity is not necessary, as can be seen in the case of Germany under the Weimer constitution where there was 'a single uniform system for the federation and the States (*22 : 783*).'

No division of jurisdiction was observed between the federation and the states ; nor was there any diversity of law. In the United States, on the other hand, in spite of a certain degree of uniformity and similarity as regards essentials, the different states possess different systems of judicial organisation and law procedure. This does not mean that the courts of the various states regard each other as foreign. On the contrary, they give full faith and credit to the records and judicial proceeding of each other.

The two general types of courts, as distinguished by Garner, are the ordinary or regular courts and extraordinary or special courts such as administrative courts, military, commercial, and industrial courts, labour arbitration courts, courts of claims, conciliation courts, probate courts, customs courts, courts of impeachment, consular courts, etc. Many of the courts under the second category exercise only voluntary or non-contentious jurisdiction.

The federal judicial system of the United States consists of District courts, the Circuit Court of Appeals, and the Supreme Court, in addition to several special courts. The Supreme Court consists of a Chief Justice and eight associate justices. Six form a quorum. The original jurisdiction of the Supreme Court is 'determined by the Constitution and includes only cases in which either ambassadors or States are parties ; its appellate jurisdiction is determined mainly by statute, and includes all cases from state courts involving conflicts between Statute Law and Federal Law, all cases involving conflicts between State Law and Federal Law, all cases involving the interpretation of the Federal Constitution or any Federal Law or Treaty, cases involving a conflict between a State Constitution and the constitution of the United States, and all cases where the decision of the Circuit Court of Appeals is not final (*58: Vol. 2. 301*).' There are

other kinds of appeal also received by the Supreme Court which need not detain us. While in England judges are never called upon to interpret the constitution, in the United States the Supreme Court judges are frequently called upon to do it. They have the right to declare the legality of the law itself and are, in a literal sense, the guardians of the constitution. Their appointment rests with the President, subject to the approval of the Senate. Once appointed, they hold office for life, there being no statutory age of retirement. They can be removed only by impeachment.

'The Federal courts, like the Federal Laws, operate directly upon the individual citizens (*58 : 307*).' In Switzerland, on the other hand, the execution of the laws and decrees made by the Executive Council is left to the cantonal administrators and courts of justice.

'The State courts are wholly distinct from the Federal courts, the bifurcation of judicial administration being absolute and complete. Each State has its own series of courts, and appeals from those courts to the Federal courts of the United States lie. .only in cases involving Federal Law, or in cases where one of the parties to the suits belongs to a different state (*58 : 308*)'.

The British courts consist of the central courts located in London and local courts scattered throughout the country, such as Country Courts, Coroner's Courts, Assizes, and Quarter Sessions. The High Court of justice in London consists of 25 judges. It does not sit as one body, but meets in three branches, *viz.*, the King's Bench, the Chancery, and the Probate, Divorce, and Admiralty Division. These courts have both original and appellate jurisdiction. 'The Court of Appeal is solely concerned with the hearing of appeals from persons all over Britain and cases tried in the first instance at other subordinate courts.' The Judicial Committee of the Privy Council tries appeals coming from different parts of the Empire.

For purposes of local judicial administration, Britain is divided into 8 circuits and sub-divided into several counties. Offences which are non-indictable, also known as 'petty' offences, receive a summary jurisdiction. There is no jury trial in such cases. The presiding officer of such courts is very often an honorary Justice of the Peace, assisted by a clerk well-versed in law. Indictable offences are tried by Assizes and Quarter-Sessions, the jury acting as a complement of the judge. Rigorous proof of crime is required before a person standing the trial is condemned.

While in criminal cases the State appears as the complainant, in

civil cases both sides appear in their private capacity. The Circuit Courts or Assizes deal also with civil disputes, but with different procedure and in a different hall.

In France there is a hierarchy of ordinary courts as well as administrative courts. They combine original and appellate jurisdiction. The highest administrative court is the Council of State. Below it are the Councils of Prefecture which deal 'with complaints regarding direct taxation and transactions of the lower public officials with private individuals (*65 : 356*).' Administrative courts deal also with election petitions.

The High Court for oridinary law in France is called the Court of Cassation. It is the supreme court of appeal as well as the court which annuls all decisions contrary to the laws of the land. Cases where disputes of jurisdiction arise as between the ordinary courts and the administrative court are decided by the Court of Conflicts. The French Justices of the Peace in the cantons are concerned more with persuading parties to arrive at an amicable settlement of disputes than with delivering judgments.

The federal judiciary in Switzerland does not occupy the high place occupied by the Supreme Court of the United States. It has the power of judicial review only over cantonal statutes and cantonal constitutions and not over federal statutes and the federal constitution. It can compel the obedience of the cantons, but not of the citizens of the cantons, to the federal constitution and federal statutes. It can approach the citizens of the cantons only through the cantonal administration. There is no hierarchy of federal courts in Switzerland, as in the United States, but only a single federal court of 24 Judges at Lausanne.

In Canada and Australia no distinction is made between the federal judiciary and provincial or state judiciary. There is only one judiciary which is under the control of the Federal Government. It has no power of judicial review, as in the United States. It has 'original jurisdiction in all disputes between the component states or provinces, and appellate jurisdiction over cases coming from the subordinate courts established in the states, or provinces and the right of judicial review over laws passed by subordinate law-making bodies (*65 : 361*).' Since the passing of the Statute of Westminister in 1931 no Dominion allows appeals to the Privy Council from the decisions of the Dominion Courts. The British judicial system including the rule of law, the jury system, and the system of honorary

magistrates was extended to India with the necessary alterations. The High Courts of India did not possess the same powers and functions as those possessed by the High Court in England. The Judicial Committee of the Privy Council was the highrst judicial authority for India and various kinds of appeals were allowed to it from the High Court.

The Collector of the Indian District was at the same time a Magistrate. In this capacity he was responsible for the maintenance of law and order as well as for the criminal jurisdiction of the district. He was also responsible for the administrative control of the subordinate magistracy. He seldom tried criminal cases, but was responsible to see that the trying magistrates did their work properly.

The Sub-divisional Magistrate for each division of the district tried all important cases which were not sufficiently serious to be sent up to the Court of Session. He also heard appeals from the Subordinate Magistrates under his administrative control. Appeals from his own decisions lay to the Court of Session.

The Tahsildar was given magisterial powers, but he seldom exercised them. The Sub-Magistrate in each taluk tried criminal cases which were not sufficiently serious to be committed to the Sub-divisional Magistrate or so petty as to be tried by the village court. Where there was a Deputy Tahsildar he tried cases which would otherwise be tried by the Sub-Magistrate at the Tahsildar's headquarters.

The High Court was the highest court of civil as well as criminal jurisdiction in the Province. Under the High Court there was the District and Sessions Judge, who tried both civil and criminal cases. The Subordinate Judges had jurisdiction of original suits and proceedings of a civil nature. Ordinarily they had no appellate jurisdiction. Below the rank of the Subordinate Judge on the civil side were District Munsifs and Village Munsifs. 'Small causes' were dealt with in summary way by District Munsifs and Sub-Judges, although the High Court had the power of revision.

Later a Federal Court was established with a limited jurisdiction. Provision was made for transferring to it some of the powers then enjoyed by the Privy Council in civil litigation.

A point of departure from the British judicial system was that in India when the State encroaches upon the property of a private person or entered into a contract with a private person, a regular suit could be filed in the ordinary way against the Crown. In England, on the contrary, the aggrieved party has to proceed by means of a Petition

of Right, which is an appeal to the good will of the Sovereign. The difference in India was due to the fact that as the Government had succeeded to some extent the old East India Company, the liability of the Company was continued under the present system of law.

Discussion of the organisation of the judiciary cannot be complete without a word about the part assigned to laymen in the judicial system. For petty cases laymen are employed as unpaid, honorary judges for short periods. In England this function is performed by Justices of the Peace and in India by honorary magistrates. On the whole, the system has not worked satisfactorily. There is a lack of uniformity in the decisions given. In Britain the 'justice of the Justice of the Peace' is rather slipshod, lacking in uniformity. On the other hand, this system gives opportunity to well-to-do citizens with leisure for political education and social service, although there is a possibility of the power given being abused.

Akin to the system of honorary magistrates is the jury system which is used widely in many countries. Its object is to help the judge to appreciate the facts of a case. It originated in England and has been widely adopted in other lands. In favour of the system it is said that it acts as a check upon bribery and other corrupt motives influencing the judges. It is also said to be a valuable means of education in civic duties and responsibilities. By its spirit of disinterestedness and application of commonsense, it is argued that the jury can help the judge in a proper appreciation of the facts of the case.

In actual practice, however, the jury system has not been a great success. There are many cases where an upright judge has been hindered in his work by a partial and prejudiced jury. This has notoriously been the case when Negroes in the United States had to be tried before juries composed exclusively of white men. An unpaid jury is reluctant to give its time when the case prolongs for days and weeks together. In cases where technical issues are involved, an ordinary jury is worse than useless.

The jury system was introduced into India in 1861. In spite of its trial for many years it must be said that it has been more a failure than a success.

Another practice which has even less justification than the jury system is the system of trial by assessors. In the criminal courts of India the system of assessors has not served any useful purpose. As a well-known judicial authority puts it: 'The assessors are not anxious to be there. Judges are not anxious to have the assessors'.

5. Appointment, Tenure, and Removal of Judges

There are three principal forms of appointment of judges, *viz.* (1) election by the legislature, (2) election by the people, (3) appointment by the executive by itself or under certain conditions such as appointment from a list of nominees submitted by the courts or on the basis of a competitive examination or with the approval of an executive council or the upper house in the legislature.

(1) Appointment by the legislature prevails in Switzerland. The judges of the federal court who number 24 are elected by the two houses of the legislature at a joint session for a period of six years and can be re-elected any number of times. This system was popular in the United States for some years after the Revolution. Since then all but four states have abandoned it. The defects of the system are that the judiciary is made unduly dependent on the legislature and appointments are made by the party caucus. Political and geographical considerations are given greater weight than technical qualifications. Notwithstanding these defects which particularly apply to the United States, the system has worked well in Switzerland on account of the small size of the legislature and the comparative lack of partisanship in politics.

(2) *Election by the People.* This system was first introduced in France in 1790 and was much abused in 1793 when stone-cutters, clerks, gardeners, and common labourers were elected as judges. Napoleon abolished it so far as France was concerned.

The system prevails today in the cantons of Switzerland and in many of the states of America. It is the worst method of securing good and efficient judges. Judges who are popularly elected are likely to be lacking in independence and legal knowledge. The masses do not possess the necessary discrimination or knowledge to elect efficient judges. When judges can stand for re-election, the system becomes infinitely worse. Judges have to give popular judgments in order to win votes. Able and distinguished jurists are often defeated. Condemning the system, Garner writes : 'It lowers the character of the judiciary, tends to make a politician of the judge, and subjects the judicial mind to a strain which it is not always able to resist (*795-96*).'

The evils of the system have been partially overcome in the United States by non-partisan primaries nominating candidates and by the bar recommending suitable candidates to the electors.

(3) *Appointment by the Executive.* This seems the best method. It prevails in Great Britain and the British Dominions as well as in the Federal Government of the United States and in six of the part-states. Though political considerations play a part in making the selection, when once appointed the judges are independent and are not under the influence of the executive. In France the executive is not given a free hand. A competitive examination is held to fill up vacancies in the lower grades, and from there promotion is by seniority. In England and the United States practising lawyers are often chosen to judgeships.

Appointment by the executive is the best method on the whole. The executive is a better judge of the merits of those appointed than either the legislature or the people can be. The method makes for the independence of the judiciary since the tenure is 'during good behaviour.' In France it is complained that the Minister of Justice is influenced too frequently by the Deputies in making appointments. To overcome this and other defects in the method under consideration, it is suggested by some that the executive selection should be from a list of nominees made by the court in which the vacancy is to be filled.

Tenure of Judges. Short-term tenure is the usual practice in the governments of the United States. The term varies from 2 to 21 years, while the average is from 6 to 9 years. In Switzerland the federal judges are elected by the two houses of the legislature for a period of six years, but can be re-elected any number of times. Outside the United States good behaviour tenure is almost universal. This is a sound practice because it secures 'a steady, upright, and impartial administration of the law.' It also secures experience and knowledge of judicial precedents.

The United States practice of fixing no age limit for the retirement of the Supreme Court judges is indefensible. It keeps in the saddle too many old men who are terribly conservative and incapable of adjusting themselves to new conditions.

Removal of Judges. In every constitution there must be provision for the removal of corrupt and inefficient magistrates. In England judges can be removed by the Crown upon an address of both houses of Parliament. The usual practice in the United States is impeachment whereby the lower house makes the charge and the upper house tries it. The process is rather cumbersome. It is capable of being used for party purposes. But this abuse can be checked by requiring an

extra-ordinary majority of votes for the removal of judges. In 12 of the American states judges can be removed by the legislature, while in 9 they can be removed by the Governor upon address by the legislature. Several states have adopted the popular recall of judges and or decisions. In many of the countries of continental Europe 'judges may be removed only by the court of which they are members, or by the supreme court sitting as a disciplinary tribunal, and after a regular trial, and for reasons expressly stated in the laws (*22 : 802*).'

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12

UTILITARIANISM IN POLITICS

UTILITARIANISM is essentially an English school of thinking. It played a notable part in England in the nineteenth century, particularly in the earlier half, in effecting reforms of a far-reaching character. Even today it is far from dead. Its influence is bound to continue so long as there are social grievances to be redressed. It is a wholesome corrective to a blind worship of the State and to the conception of abstract natural rights. According to Hallowell, it had its basis in the nineteenth century liberalism when "freedom was conceived less and less as a natural right and more and more as a social utility." To quote the same writer again : "Utilitarianism was an attempt to establish ethical and political theory upon a thoroughgoing scientific empiricism (*31 : 198*)."

1. STATEMENT AND CRITICISM OF UTILITARIANISM

Utilitarianism is primarily an ethical theory based upon the psychological doctrine known as Hedonism. According to the teaching of Hedonism, every man seeks pleasure and avoids pain. Other motives may enter the calculation, but the ultimate motive is that of pleasure *versus* pain. The hedonistic teaching is by no means modern. It goes back to the Greek times, especially to the teachings of Aristippus, the founder of the Cyrenaic school, and, in a modified form, to the teachings of Epicurus. While modern Hedonism differs widely from the ancient, both forms regard pleasure as the guiding principle. Earlier Hedonism was egoistic in character, while the modern is altruistic. Utilitarianism bases itself on the latter form. Hence it is sometimes called altruistic or universalistic hedonism. Its goal is the greatest happiness of the greatest number, or simply, general happiness ; and the scoffer adds, 'the greatest number is one'.

It is generally admitted today that the psychological and ethical foundations of Utilitarianism are unsound. Man is, no doubt, self-interested, but self-interest is not his only characteristic. Self-regarding and other-regarding impulses are present in all men in varying

degrees. To use the language of Henry Drummond, there is in man a struggle not only for one's own existence, but also for the existence of others. Therefore, to build a psychological and ethical theory on one aspect of human nature to the exclusion of others, is seriously defective. Bentham evades the issue when he claims that every man is self-interested, but that, in his own case, self-interest takes the form of doing good to others. Genuine altruism is possible for man.

To the hedonist, happiness consists in sentient satisfaction. Sensibility, as James Seth points out, is a large and important element in human life. But it is not the ultimate and characteristic element. Man is not mere feeling. He also possesses a rational element. 'The hedonistic theory of life purchases its simplicity and lucidity at the expense of depth and comprehensiveness of view. Its formula is too simple (*71 : 115*).' To quote the same writer again, hedonism cannot interpret the qualitative, but only the quantitative aspect of the good. The only distinction it can establish is that between the 'greater' and the 'less'; it has no place for the 'higher' and the 'lower'. It points to the *greatest*, but not to the *highest* good.

In making the above criticisms, we do not forget that Utilitarianism claims to make a powerful appeal to the altruistic impulses of man. But our contention is that, in so doing, it is inconsistent with itself. Universalistic hedonism is a contradiction in terms. If a thing is 'universalistic' it cannot be hedonistic; and, conversely, if it is hedonistic it cannot be 'universalistic'. Pleasure is individualistic in nature. It is a subjective experience. Therefore, to speak of general happiness as meaning general pleasure, as the Utilitarians do, is meaningless. A knows what gives him pleasure and B knows what gives him pleasure, but neither A nor B knows what general pleasure is like. We can sympathise with another person's pleasure or pain. But we ourselves cannot feel it. We cannot experience it. Another respect in which pleasure is individualistic is that the individual himself must be the judge of his happiness. Only he can tell whether a thing gives him pleasure or not. But the moral criterion of the Utilitarians is general happiness. Our contention is that there is no logical transition from pleasure as end to general happiness as end.

Thus, in developing his theory, the Utilitarian was faced with the opposition, why should the individual promote the happiness of the community as a whole ? J. S. Mill's answer is that the individual's pleasures are bound up with the pleasures of others—as in the case of the pleasures of parents and children. Since so many of our pleasures

are intimately connected with the pleasures of others, Mill argues that it is not always necessary to put pressure on the individual. Bentham's answer, however, is different. He recognises the fact that the individual often seeks his pleasure at the expense of the happiness of the group. Nevertheless, Bentham's passion for 'general happiness' is so great that he has recourse to the doctrine of sanctions to force the individual now and then at least to sacrifice his happiness in order to promote the happiness of the group. These sanctions are four in number *viz.*, the physical, the political (or the law of the land), the moral (or the pressure of public opinion), and the religious.

Although Utilitarianism is an unsound ethical theory, it has been instrumental in bringing about a large number of valuable reforms in practical politics. How do we account for this seeming contradiction ? The answer is to be found in the fact that the Utilitarian performs a somersault when he passes from ethics to politics. As an ethical thinker, he interprets general happiness to mean general pleasure. The end of conduct is to him the largest number of pleasurable actions possible for the largest number of people. Pleasures, he holds, are capable of being added up, since they differ in quantity only, and not in quality. (According to J. S. Mill, however, who is not an orthodox Utilitarian, pleasures differ both as regards quantity and quality.) In the words of Bentham, the leader of the school, 'quantity of pleasure being equal, push-pin is as good as poetry'. The difficulties encountered in summing up pleasures and in giving an intelligible meaning to the term 'general happiness' as meaning general pleasure are too patent to need any comment. The Utilitarian himself is not too eager to undertake this fruitless task.

As a political thinker, the Utilitarian interprets general happiness in a loose manner to mean general well-being or social welfare. He minimises the conception of pleasurable feelings and fastens attention upon utility. It is obvious that terms like 'social welfare' and 'utility' are of such a general and practical character that anybody using them as the foundation of his political programme is bound to do immense good. Thus we find that it is the inconsistency of the Utilitarians in the interpretation of their end which accounts for the great good which they accomplished in the realm of practical politics. Their political theory was a theory of government rather than a theory of the State.

If one wishes to be critical with Utilitarianism, one can argue with Hallowell that concentration camps for a minority are justifiable for

the sake of the greatest happiness of the greatest number. Likewise, tyranny and slavery, Benthanism, says Hallowell, is 'a liberalism that is congenial to tyranny (*31 : 217*).' This is not, however, the sense in which Bentham understood or interpreted Utilitarianism.

2. Appreciation of Utilitarianism (*13 : Chapter I*)

Criticism of Utilitarianism as an ethical theory does not prevent us from giving due praise to it in the political field. Utilitarianism represents interest in the welfare of mankind. To this interest it combines practical efforts to improve the conditions of human life on rational principles. It believes in the possibility of raising the condition of the masses through effective State legislation. All Utilitarians have at heart the general welfare. Their first and great concern is human life, human activity, human well-being. They are the strenuous opponents of tyranny and injustice, and the champions of individual freedom. They are opposed to all 'sinister' interests. Hence Utilitarianism is emphatically practical. It is reformatory. It is simply another name for humanism.

Utilitarianism is often unjustly criticised as the utility theory or expediency philosophy. Utility means serving a purpose or end. In popular conversation, it often means a low purpose or end. The Utilitarian conceives man not only as an individual but as an individual who is by nature social. 'Utility for him means what is best for all the elements of his nature, and what can most effectively promote his full and ultimate good, and the full and ultimate good of his fellows'. The Utilitarian doctrine is expressed in such phrases as 'the greatest happiness of the greatest number', 'enlightened benevolence', and 'general happiness (*13 : 13*)'.

In like manner, Utilitarianism has sometimes been regarded as synonymous with materialism of the worst type. In order to avoid misconception, it is proposed that we substitute such terms, as 'welfare' and 'well-being' for 'Utility' and 'happiness'. Welfare covers every conceivable element that goes to determine and constitute man's happiness. The only objection to his proposal is that it materially deviates from the hedonistic starting-point of Utilitarianism. If the Utilitarians are prepared to abandon their connection with Hedonism, there should be no hesitation in accepting their theory. Thus we note that ideal Utilitarianism rejects Hedonism and combines the best elements of Idealism and Utilitarialism. It links up the

development of human personality with the well-being of society. T. H. Green, in whom we observe this tendency and who is like Mill on many questions, argues that the Utilitarian, beginning as he does with Hedonism, has no right to the test of social well-being. 'Defining his end as the realisation of a permanent self-satisfaction, Green escapes the difficulties attending the balancing of pleasures and pains'. Commenting upon Green's treatment of Utilitarianism, D. G. Ritchie writes : 'There is no reason why the Idealist, after making clear his objections to Hedonism, should not join hands with the Utilitarian'. Green's ethical system, says the same writer, is Mill's Utilitarianism *plus* a secure basis and a criterion.

Reverting to Utilitarianism at its best, happiness, says the Utilitarian, cannot be obtained independently without regard to others, since it is a mistake to conceive an individual as simply an individual. The individual's happiness, he believes is necessarily dependent on the existence and organisation of the State. Customs, law and legislation should encourage as well as limit the individual's attainment of happiness, for happiness is not a mere synonym for selfish indulgence. The supreme consideration of the legislator, says the Utilitarian, should be the welfare of people in general. Proper legislation has a negative and positive aspect. Negatively, it should get rid of degrading or untoward circumstances. Positively it should put favourable inducements in their place.

It is sometimes said that Utilitarianism lacks in ideality. This is not a valid charge. 'The vision of the future improvement of society and of the regeneration of mankind is precisely what inspires and stimulates him and upholds him in the face of difficulties and seeming failure (*13 : 26*).' The ideals that the Utilitarian cherishes are of an essentially practical and human kind. The ideals rejected by him are those which appear to him either undesirable or unrealisable, or both. He is neither a fanatic nor a dreamer. His feet stand on solid ground.

Utilitarianism is founded on experience. It appeals to experience as the ultimate test. Consequences are everything to the Utilitarian. He regards experience as the source and origin of knowledge and the ultimate criterion of truth. He is opposed to mere abstraction or speculation.

Utilitarianism is thus an intensely human and intensely practical philosophy. It is not a new ethical theory. It 'enters the realm of politics and aims at finding itself embodied in state legislation (*13 : 29*).'

It is directly in touch with the living movements and interests of men (*13 : 29*).' Time has corrected much, has outgrown much, has discarded much ; but the keen resentment of injustice that characterised the Utilitarians, and their ever active sympathy with the poor and the oppressed, and their enthusiasm for human welfare are strikingly apparent still (*13 : 249-58*).' The Utilitarians had their defects and their failures, 'but their face was ever towards the future (*13 : 249-58*).'

3. Utilitarian Thinkers

The leader of Utilitarianism in England was Jeremy Bentham. He was extremely fortunate in having about him a band of able and devoted men who gave themselves to the task of applying the Utilitarian creed to the various aspects of social life in England. These were James Mill and his son, John Stuart Mill, the historian Grote, the psychologist Alexander Bain, the jurist John Austin, and the economist Ricardo. With one partial exception, all of them were radical philosophers and men of affairs. The England of their day was seething with social abuses and it gave them ample opportunity for the exercise of their 'passion for improvement'.

1. *Jeremy Bentham*, who lived from 1748 to 1832, laid the foundations of the Utilitarian School of thinking and he played a conspicuous part in removing injustice and in bringing about lasting reforms. For the great task which he undertook, Bentham was particularly fitted by his thorough legal training, sound commonsense, and warm sympathy for the down-trodden and the suffering. The keynote of his philosophy is : 'Nature has placed man under the government of two sovereign masters, *pain and pleasure*. . . . They govern us in all we do, in all we say, in all we think : every effort we make to throw off our subjection will serve but to demonstrate and confirm it.' The principle of utility, he says, recognises this subjection, because it approves or disapproves of every action whatsoever, according to the tendency to promote or oppose happiness. This principle he later describes as 'the greatest happiness principle'. In the apportionment of lots of happiness, the principle to be applied, he says is 'each to count for one and no one for more than one.' In other words, there should be absolute impartiality in the treatment of individuals.

According to Bentham, pleasures differ in intensity, duration, certainty, and propinquity, but are one in quality. This means that we cannot regard one pleasure as 'better' or 'higher' than another.

Pleasures should be capable of being summed up in quantity or bulk.* All this seems clearly absurd to us. But the practical object which Bentham had in view was to prevent well-intentioned people from prescribing for others what would constitute their 'real pleasure'. The Benthamite doctrine is undoubtedly narrow and psychologically false. Nevertheless, as Ivor Brown remarks, it 'has an immense value because it denies the infallibility of the superior person who endeavours to foist his own morality or his own type of happiness upon others whom he believes to be the pitiful dupes of ignorance (*6 : 96*)'. 'Benthamism, shorn of its crudities, is simply humanism (*6 : 102*)'.

The primary concern of Bentham was the good or welfare of the community. He believed that his principle of utility could be applied with advantage to all social questions, and particularly to constitutional, legislative, and law reform. 'He had a living and practical interest in view, and was not merely concerned with a barren speculative theory (*13 : 48*).'

At the time that Bentham appeared on the scene as a great reformer and thinker, the theory of natural rights and the pompous generalisation of Blackstone regarding the greatness of the English constitution and the English law held the field. Upon both of these Bentham poured his scorn, and exposed them to merciless criticism. Natural rights he described as 'simple nonsense : natural and imprescriptible rights rhetorical nonsense—nonsense upon stilts'. For the theory of natural rights he substituted the principle of utility. Although Thomas Paine, the staunch advocate of natural rights, and Bentham differed violently in their philosophical outlook, both of them advocated many liberal measures in common. As Ivor Brown writes : 'Two men can scarcely ever have moved towards the same destination by such very different roads (*6 : 98*).'

In his first work of any importance, *A Fragment on Government*, published in 1776, Bentham bitterly criticised Blackstone who praised the English law as a slow, natural growth in accordance with divine povidence. 'Bentham showed that it was a shameless tyranny which worked only for the misery of the weak and poor, an elaborate mechanism for helping the educated and the powerful to keep down the ignorant and the oppressed (*6 : 102*).' He further attacked Blackstone for basing political obligation upon an original social contract.

*** "The interest of the community", he wrote is nothing more nor less than "the sum of the interests of the several members who compose it."**

He argued that there was no such contract in the past and that, even if there were o ie, it did not bind the present generation. The only valid reason for obedience was utility or the general good. Governments exist because they are believed to promote the happiness of those living under them. In Bentham's own characteristic language, 'The probable mischiefs of obedience are less than the probable mischiefs of disobedience'. Thus, as Dunning points out, among the venerable principles and practices of conservative England's law and politics, Bentham became 'a veritable bull in a China shop (*27 : 212*).'

Theory of Government. Far from extolling the English constitution, as his contemporaries had done, Bentham attacked it in forthright earnestness. He pleaded for annual parliaments, vote by ballot, and universal male suffrage, subject to the test of ability to read. The object of all his proposals was to secure the real and effective representation of the people and to prevent political corruption. It is noteworthy that two out of these three proposals have since become law. The plea for annual parliaments was dropped, and is not likely to be revived. Bentham was eager that democracy should have full sway. With this object he further recommended the equalising of electoral districts and the freedom of the press. He went still further and attacked the utility of the House of Lords and of monarchy on the ground that the interests of these institutions were not compatible with the interest of the people at large. He was convinced that a single-chambered legislature, renewable every year, was most in accord with democratic principles. Bentham's faith lay in a Republic, which he thought would be conducive to 'both efficiency and economy and the supremacy of the people'.

By means of his *Constitutional Code,* he hoped to better 'this wicked world by covering it over with Republics'. Neither monarchy nor limited monarchy, in his view, secures maximum happiness. 'It is only when democracy rules that the interests of the governors and the governed become identical, for the greatest happiness of the greatest number is then the supreme end in view (*13 : 78-79*)'.

Legislation. It was in this field that Bentham made his greatest contribution. On the publication of his *Principles of Morals and Legislation,* he became a sort of 'new Moses' of legislation. Statesmen from different parts of the world looked to him for practical guidance. He was peculiarly fitted to play the role of an ideal legislator in the Platonic sense, for he was a man above parties and private interests, entirely devoted to the common well-being. The ends of legislation

are, according to him, security, subsistence, abundance, and equality. In simple language, the object is the good of the people. If laws are to be obeyed, says Bentham, it is necessary that legislation should carry the people along with it. Unwilling obedience and general dissatisfaction mean ultimate revolution. Therefore, in order to secure cheerful obedience the reasons for legislation should be made plain and obvious to the people. By means of fear and reward people should be checked from pursuing their own selfish interest.

The number of practical reforms which Bentham advocated are legion. The principal ones among them, as summarised by Davidson, are : reform of the corrupt and restricted parliamentary system ; thorough-going municipal reform ; humanisation of the terribly cruel criminal law of the time ; improvement of prisons and prison management ; abolition of imprisonment for debt ; elimination of the usuary laws ; repeal of the religious test ; reform of the poor law ; suppression of 'sturdy beggars' ; utilisation of able-bodied paupers ; training of pauper children; establishment of a vast scheme of national education ; institution of 'frugality banks' (now known as savings banks) and friendly societies; forming of a code for merchant shipping ; protection of inventors ; encouragement of local courts ; comprehensive system of health legislation ; creation of public prosecutors and advocates for the poor ; thorough-going revision of hereditary rights ; supervision of scientific and pilosophical foundation ; and recall of public officials. It is needless to add that many of the reforms for which Bentham ardently pleaded have since been incorporated into the laws of the various lands.

Law Reform. Bentham aimed at being a great law reformer. He was eager 'to see justice administered, and happiness secured to the deserving and the oppressed (*13 : 92*)'. With this objective, he criticised existing laws and existing machinery for the execution of them. But he was never a mere destructive critic. His object was primarily construction, and criticism was simply a means to this end. He applied himself to the laws not only of various European countries, but also to international law, and he laid down principles of great value. Sir Henry Maine pays a generous tribute to Bentham's place in the history of judicial reform when he writes : 'I do not know a single law-reform effected since Bentham's day which cannot be traced to his influence'.

Bentham realised that the laws of the day were in a chaotic condition and he took upon himself the task of codifying them, but no

encouragement was given to him in his own country. Encouragement came, however, from foreign lands, paticularly from France and Russia. Applying his utilitarian principles to the laws of these countries, Bentham demonstrated how his theory would work in concrete instances.

From the codification of laws Bentham turned his attention to the form in which laws were framed. He had no patience whatsoever with the unnecessary technicalities, redundancies, and obsolete phraseology fondly indulged in by framers of laws. Laws, he said, must be expressed in plain and short easily-followed sentences. They should be put within the easy reach of those who are held responsible for obeying them. Bentham scathingly criticised the mode of administering laws, which pressed most heavily on the poor. He condemned the dilatory methods of judges which involve unnecessary expenditure to the parties concerned, as also the miscarriage of justice arising from the technicalities of law. He had scant respect for judges and he heartily supported juries as a check on their despotism. 'He insisted on individual responsibility in all judicial offices and, as a corollary, advocated the propriety of only one judge to a tribunal; plurality of judges trying a case meant weakened responsibility in each (*13* : *97*)'.

Education. Bentham had unswerving faith in the power of education to improve mankind. He sketched two systems of education—one for pauper children and another for upper-class children. His system of teaching started from this position: 'Begin with what is useful—what is most likely to be of service to the pupil in his after-career in life (*13* : *89*).' He laid down the modern principle: 'Teach first the things that are easiest to learn, *i.e.* pay regard to the learner's capacity and do not force him contrary to his aptitude and his natural inclination (*13* : *90*).'

Punishment and Prison Reforms. Bentham held that the chief end of punishment was to prevent crime. It should not be merely vindictive. While recognising the pleasure of revenge, Bentham held that it should be given a minor place in the award of punishment. Punishment should be exactly suited to the purpose. It should be neither more nor less. It should secure the good of the community. If capital punishment were necessary for the safety and security of society, it was justifiable, otherwise not. Whether or not capital punishment was to be administered in cases other than murder, Bentham held, should be determined by considerations of utility,

i.e. their effect upon the general good. The execution of justice should, as far as possible, be exhibited to the public eye so that prospective evil doers, seeing it, would be frightened away from committing the crime.

On the whole, Bentham's emphasis is on the deterrent theory of punishment. But this does not exclude the reformation of the criminal, which Bentham regards as 'a part of the calculation of the balance of consequences in meting out punishment *(13 : 101)*.' Bentham believed that a great many criminals and evil-doers were capable of improvement and that they could be restored to society as useful and self-respecting members. On the strength of this belief he advocated many important reforms for the rehabilitation of the criminal such as the teaching of industries while in confinement. He evolved a scheme known as the 'Panopticon' for the systematic supervision of the daily life of convicts. The prison buildings were to be arranged in such a fashion (semi-circular) that the superintendent could have a view of all the cells from his residence. The scheme combined careful supervision, discipline with sympathy, and improved environment. The criminals were to be taught not only useful trades but were also to be given elementary education. Moral and religious training should be brought to bear upon them. Ideals should be set before them in such a manner that they would lend their active sympathy to the reforming of their character. On their discharge, criminals were to be provided with employment until they were able to regain the confidence of the public and to stand on their own feet. Although many of these reforms did not come into being in Bentham's day, the 'vast reforms of prisons and penitentiaries that have taken place since his day, and the institution of reformatories and industrial schools, derived impulse from him and have proceeded on the principle that he laid down *(13 : 111)*.'

Another respect in which Bentham was in advance of his day was in his belief that punishment should fit the criminal and not the criminal the punishment. He believed that punishment should be graded according to the nature of the crime, the previous character of the offender, his parentage, the circumstances in which the crime was committed, the motive of the criminal, and the kind of persons to whom the injury was done. Punishment was to be certain and impartial in its imposition.

The above detailed sketch of the conspicuous part played by Bentham in the early part of the nineteenth century in ameliorating

social corditions will serve to show the reader the tremendously practical and reformist character of Utilitarianism. It should be remembered, however, that the principle underlying these reforms was not 'general happiness', but general welfare or social expediency or utility in general. Of Bentham it is rightly said that he enquired of all institutions whether or not their utility justified their existence.

2. *James Mill* (1773-1836) was a devoted follower of Bentham to the end of his life. He was 'the most strenuous, perhaps the ablest and the most uncompromising disciple that Bentham had (*13 : 114*).' He had the keenest interest in social and political questions and was faithful to the inductive and experimental method of Utilitarianism. Like Bentham, he was a firm believer in the value of education for both the lower and higher classes. Like Bentham, also, he showed a keen enthusiasm for law and law reform. He had no great objection to monarchy. He regarded a sound representative system as a check upon the self-interest of governments. While not advocating the abolition of the House of Lords, as Bentham did, he proposed drastic measures for the curtailment of its power, closely anticipating the 1911 Act. He believed that political power, when vested in the middle rank of society, would be most conducive to order and progress. In every way, as Davidson remarks, James Mill was 'the leader of the Utilitarian Radicals after Bentham, and the chief operative force in effecting the practical reforms of the school (*13 : 142*).'

3. *John Stuart Mill* (1806-73), son of James Mill, is the better known of the two Mills. He softened down the harshness of Benthamite ethics, and, in so doing, 'he made Utilitarianism at once more human and less consistent (*6 : 119*).' He admitted that pleasures differed not only in quantity but also in quality. In his oft-quoted words : 'It is better to be a human being dissatisfied than a pig satisfied, better Socrates dissatisfied than a fool satisfied. And if the fool, or the pig, is of a different opinion, it is because they only know their own side of the question. The other party to the comparison knows both sides.'* Mill once again differed from Bentham in narrowing the gulf between self-interest and general happiness. 'The Utilitarian standard', says he, 'is not the agent's own greatest happiness, but the greatest amount of happiness altogether'. 'As between his own happiness and that of others, Utilitarianism requires him to be as

* In so modifying Utilitarianism, Mill virtually repudiated it. Some pleasuresare, according to his thinking, more valuable than others.

strictly impartial as a disinterested and benevolent spectator. In the golden rule of Jesus of Nazareth, we read the complete spirit of the ethics of utility. To do as one would be done by and to love one's neighbour as oneself, constitute the ideal perfection of Utilitarian morality (*61 : Ch. II*).' While Bentham recognised only external sanctions for constraining the individual to promote the general happiness, Mill admitted both external and internal sanctions. He held that every man possessed 'a feeling for the happiness of mankind' and that he therefore should desire and promote general happiness. His reasoning is: 'Since A's happiness is a good, B's a good, C's a good, etc., the sum of all these goods must be a good (*61 : II-116*).'

Mill was as much interested in social reform as in philosophical speculation. In his famous essay, *Liberty*, published in 1859, Mill stood forth as the undaunted champion of individuality. The book is an able and well-reasoned vindication of freedom of thought, speech, and action. While an ardent believer in democracy, Mill was afraid that it tended to crush out all individuality and originality. Accordingly he favoured the widest possible freedom in the spheres of thought, speech, and action. He believed in the toleration of opinions and in complete freedom of discussion. It was his conviction that truth would eventually win in the struggle of ideas. He really taught the survival of the fittest in the realm of ideas. Social vitality, he believed, should precede social calm. He argued that individuals and associations of individuals should be given complete freedom of action as long as their conduct did not seriously interfere with the interests and rights of others.

In the sphere of practical politics, Mill was a Radical. He was an ardent champion of the rights of women and wanted to 'emancipate' them from the 'subjection' of men. He believed that differences between sexes were not fundamental and inevitable. As a Radical member of Parliament from 1866 to 1868 he strenuously advocated the interests of labouring classes, woman suffrage, reduction of the national debt and land reform in Ireland. He opposed all class interests and one-sided legislation. He believed that minorities were not adequately represented in the British Parliament and so advocated the system of proportional representation associated with the name of Hare. While favouring universal suffrage for all tax-payers, Mill advocated plurality of votes for men of superior intellect and high character. He opposed payment of members of Parliament in the interests of the purity and efficiency of government, and condemned

the secret ballot on the ground that it tended to promote selfish and irresponsible voting. While maintaining the superior legislative authority of the House of Commons, Mill believed that the House of Lords, containing as it did men of legal ability, should be entrusted with the task of framing bills to be brought before Parliament. He favoured compulsory education provided by the State, although he feared that it might result in turning out people after a single pattern determined by the governmental bureau. It was a 'mere contrivance', he said, 'for moulding people to be exactly like one another.'

In the economic field, Mill was far from being a bigoted individualist. He approved of extensive State action when it was in the interest of social welfare. In his later years he looked forward to the socialistic ideal when there might be 'a common ownership in the raw materials of the globe, and an equal participation of all in the benefits of combined labour'. He combined political liberalism with economic socialism. As Ivor Brown puts it, 'Mill's political ideals are perfectly compatible with socialism, so long as that socialism is based on a philosophy of individual welfare (*6 : 129*).'

In all that he wrote and said, the primary end which Mill had before him was the promotion of social well-being and the preservation of individuality. He threw the entire weight of his support on the side of progress and believed in the possibility of improving mankind through intelligent human effort. As a good Utilitarian, he laid stress on happiness as the ultimate standard of all conduct, but at the same time regarded freedom as a vital necessity. The liberty for which he so strongly pleaded was the liberty of individual men and women, and not of groups and abstractions. His chief merit lies in the fact that he regarded every social question in terms of human beings. Although one can easily point out loopholes in his social and political thought, there is no gainsaying the fact that it contains elements of permanent value. 'That is why the Utilitarian creed, though long discredited, has in it the prospect of immortality (*6 : 129*).'

Other Utilitarian thinkers need not detain us long. The greatest contribution made by *John Austin* (1770-1859) is his elaboration of the philosophy of law from the side of jurisprudence. In the field of practical politics he had no burning zeal for democratic government. He was distinctly conservative and was opposed to parliamentary reform in 1859. *George Grote* (1794-1871) was an ardent Benthamite. He was a practical politician as well as a political philosopher. He

advocated vote by ballot. He 'was an eager champion of the extended franchise (*13: 238*).' *Alexander Bain* (1818-1903), the famous psychologist, gave Utilitarian ethics the scientific form that it required. He made 'experience' the watchword of his associationist psychology.

'To the Utilitarian Radicals, thus passed in review, Britain owes an immense debt. Their views held sway for the greater part of the nineteenth century, and the result was awakened interest in active politics, social reforms, and beneficent legislation to an extent that had previously been unthought of. The benefit is being felt to-day.... They carried forward their principles step by step, each great thinker adding something of permanent value. Progress was their watchword, and their enthusiasm for liberty and the public good supplied the driving power. That is what the present time inherits from them. They supplied to the world no complete philosophical system, but certain well-defined principles that have stood the test of results and that still allow of indefinite beneficent application (*13: 249-50*).'

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13

IDEALISM IN POLITICS

1. The Idealistic Tradition in Politics

The idealistic theory of the State is known by various names. Some call it the absolutist theory, some call it the philosophical theory, and still some the metaphysical theory. MacIver goes to the extent of describing it as the 'mystical' theory. Whatever the name may be, the idealistic tradition has had a long, though somewhat broken, history. Its earliest traces are found in the writings of Plato and Aristotle. These Greek thinkers, along with many others of the time, regarded the State as natural and necessary. To them the State was all in all, and apart from it man could not attain the highest possible perfection for him. Aristotle held that the State first came into being in order to meet the needs of mere life, but was continued through the necessities of a moral life. To both Plato and Aristotle the State was supremely an ethical institution. The true State was a 'partnership' in a life of virtue.

This way of looking at the State from the moral point of view and of approaching political theory through ethics has profoundly affected later idealistic thinkers. Another respect in which Greek philosophy has left a deep impression on some of the recent idealists is in the practical identification of the State with society. This tendency is particularly marked in the thinking of Bosanquet. A third way in which Greek thought, particularly the thought of Plato, has influenced later idealists is in conceiving the State as an organic unity. The idealist starts from the position that the State is a central social system, in which the individual must find his proper place. The individual has no meaning or significance in and by himself. Whatever importance he has is in relation to the organic whole of which he is an intrinsic part. The sharp contrast between the individual and the State with which we are all too familiar today was unknown to the Greek. The social life was to him a life of citizenship, and the perfect life was the life of a citizen. The individual apart from the

State was to him 'an unethical abstraction (*71 : 288*).'

Even in the Greek period the high ideal of the State held by Plato and Aristotle was not universally accepted. Greek ethics, as James Seth points out, 'close with the cry of Individualism and Cosmopolitanism (*71 : 289*)', as seen in the teachings of the Epicureans and Stoics respectively. During the Middle Ages the Church to a large extent displaced the State, and controversy raged over the respective jurisdiction of the Church and State. The conditions prevalent during this period—struggle between the Church and State, monarchy and feudalism, etc.—were not conducive to the fruition of the best in Greek thought. Thus for nearly a thousand years Greek political philosophy was practically dormant. With the Renaissance and the Reformation, there came a revived interest in Greek learning. Sir Thomas More, in his *Utopia*, was considerably influenced by Plato's *Republic*. But what interested him in Plato was his Communism rather than his idealistic teaching. The Reformation doctrine of individual importance gave the individual a new independence, paving the way for the doctrine of personality, which is the cornerstone of modern idealism. The period following the Reformation was marked by individualism, nationalism, competition, and mercantilism, the latter two 'combining to create the irresistible invasion of capitalism (*6 : 26*).' During this period, too, the idealistic tradition could not make much headway. The doctrine of the divine right of kings held the field for a considerable period, anticipating by two centuries the Hegelian doctrine of the divine right of the State.

It is with Rousseau that Greek political theory begins to exercise a steady and continuous influence on modern thought. For this reason Rousseau may be rightly regarded as the re-discoverer of the great truths discovered by Greek philosophers centuries ago.

Plato was a dominant influence in his thought, and with his help he liberated himself from the individualist theory of Locke, and arrived at the collectivist theory of state expounded in the *Social Contract*. In his epoch-making work, the *Social Contract*, Rousseau advances the conception of the State as a moral organism and the doctrine of the general will. The State in his judgment is not primarily a legal association for the safeguarding of the citizen's legal rights. It is essentially a moral association, through whose common life man reaches his moral perfection. Apart from his membership in the State, man is a stupid and limited animal. By his membership he becomes 'an intelligent being and human.' The State

substitutes justice for instinct and law for appetite. It gives to men's actions the morality they lacked before. Its chief duty is to make moral liberty possible for its citizens by freeing them from the bondage of the flesh. It must force men to be free. Like Plato, Rousseau had a passion for the State, although in some respects his conception of the State differed from that of Plato. Rousseau preached the doctrine of the general will and of every individual having a share in its formulation.

The profound teachings of Rousseau influenced the thought of Kant and the other German philosophers of the time and, through them, the thought of the British idealists. Postponing a detailed treatment of their thinking to a later place in the chapter, we shall now turn to a brief description of the idealistic position in general.

2. Statement of the Idealistic Theory of the State

The idealists believe that the State is an ethical institution. In the words of Bosanquet, it is the embodiment of an ethical idea. Other important ethical institutions in society are the family and the Church. The State is the most important among these institutions. In a sense it includes all the others. Interpreted strictly, the State is a legal organisation. But interpreted broadly, it is a moral organism practically identical with society. Justice for the individual consists in discovering his proper place in the life and action of the community and in fulfilling the functions attached to that place.

The State is indispensable to the fullest growth and development of human personality. Man is by nature a social being, and the State is the effective organisation of society for the realisation of a moral end. Between the end of the individual and the end of the State there is no true contradiction. The end of both is the perfection of personality. From an ethical standpoint, the State is not an end in itself. It is a means to an end.

The ethical unit is the person. 'The state exists for the sake of the person, not the person for the sake of the state. The function of the state is not to supersede the person, but to aid him in the development of his personality, to give him room and opportunity. It exists for him, not he for it ; it is his sphere, the medium of his moral life (*71 : 293*).'

Viewed in this manner, the State is man's best friend. The conception of Man *versus* the State is entirely erroneous. The anarchists

who regard the State as an unmitigated evil and the individualists who look upon it as a necessary evil, both fail to understand its true significance. Anarchism leads to the evils of mob rule, and individualism today 'has almost reached its *reductio ad absurdum* (*71 : 293*).' The ideal that each shall be allowed to live for himself has proved to be an impossible and contradictory ideal. As a reaction against extreme individualism there have arisen socialism and idealism. The latter theory, as mentioned above, contends that the true interests of the individual and the true interests of the State are one and the same—*viz.*, the fullest and freest development of human personality. The idealist goes back to the Greek conception of the dependence of each on all and all on each. He believes that 'the state is not an alien force imposed upon the individual from without, but that in their true being the state and the individual are identical (*71 : 292*)', therefore obedience to the State is obedience to the citizen's own better self.

While the ethical unit is the person and the State exists for the sake of the person, the idealists believe that the State has a will and a personality. It has a past, a present and a future, and is thus in some ways different from the individuals who comprise it at any one time. It has a continuity of purpose and steadiness of aim. The ideal State, embodying the rational will in its most perfect form, cannot will anything contrary to the best interests of its individual members. The fact that such a State has nowhere existed does not deter the idealist from contemplating it as a goal towards which to direct the activities of existing States.

The basis of the State is, according to the idealist, will and not force. The State no doubt uses force, but that is not its primary or most significant quality. It is the embodiment of will. We ought to obey the State, says the idealist, because of the consciousness that in obeying it we advance a common good of which individual good is an intrinsic part. The idealist believes that man is a rational being and that lasting good can be brought about by continually appealing to his reason. He believes in the power of ideas.

The tendency of contemporary thought and effort is not, on the whole, to curtail the sphere of the State. It is 'to socialise the State or to nationalise society (*71 : 292*).' The 'true function of the State is to mediate and fulfil the personal life of the citizen (*71 : 294*).' In practical language, it means that the State should remove obstacles to good life. It cannot and ought not to enforce religion and morality.

It should constantly keep before itself the supreme end of the individual which is the development of personality, also known as self-realisation or self-satisfaction. It should maintain those conditions of freedom which are necessary for man's good life by enforcing a system of universal and impartial right. And rights, as mentioned earlier, are the outer conditions necessary for man's inner development.

In serving the State we are not disloyal to our highest selves. We do not serve two masters. The only master of our loyal service is the ethical and personal ideal (*71 : 294*)'. The idealist does not regard as important the individual apart from the State in his repellent isolation. 'Such an individual is anti-social and anti-political (*71 : 295*).' His life is one 'of absolute *laissez faire* (*71 : 295*).' The idealist conceives the person as 'social and political as well as individual (*71 : 295*)'. 'To isolate him from others would be to maim and stunt his life....In so far as the State may be said to interfere, it is only with the individual, not with the person ; and the purpose of its interference is always to save the person from the interference of other individuals. Neither the State nor the individual, but the person, is the ultimate ethical end and unit (*71 : 301*)'.

As a general rule, the individual should obey the State. This does not mean that he may not criticise the political order. He is both sovereign and subject. But when the State invades the sphere of personality, he has the right of rebellion. Rebellion in such case becomes a public duty. Even in his rebellion the individual should remember that he is still a citizen loyal to the best for which the State stands. There are two situations, says James Seth, in which the individual may rightly rebel ; (*a*) When the State acts as a private individual or a body of individuals ; (*b*) When the present formulation of the general will becomes so inadequate as to require reformation.

(*a*) The English and French revolutions are good illustrations of the former case. At these times 'the actual State contradicted the ideal, seeking to destroy those rights of personality of which it ought to have been the custodian, and before which it was called to give an account of its stewardship.' Hence revolution was eminently justifiable. 'The true sovereign must count nothing "his own", must have no private interests in his public acts : his interests must be those of the people, and their will his. If he acts otherwise, asserting his own private will, and subordinating the

good of the citizens to his own individual good, he thereby uncrowns himself, and his sovereignty. Then comes the time for the exercise of the supreme power that still remains in the people (*71: 301*).'

(*b*) England before the Reform Bills provides a good illustration of a situation in which the general will needed to be reformulated. In cases of this kind, reformulation does not need to take the form of revolution. Reformation is enough. Such reformation goes on continuously in the good State where there is an articulate public opinion.

3. Idealistic Thinkers

Much unjust criticism has been levelled against idealism by failing to distinguish between the teachings of German and British idealists on the one hand, and the teachings of individual idealistic thinkers on the other. Joad, for instance, seems to condemn the whole of the idealistic school just because of the excesses to which the theory was carried by Hegel. This is altogether unfair.

A. *The German Idealists.* The first to claim our attention among these is *Immanuel Kant* (1724-1804), who is generally admitted to be the father of idealistic philosophy in modern times. There are some writers, however, who would confer that distinction upon his successor, Hegel. Kant, like his political guide, Rousseau, marks the transition from eighteenth century individualism and the philosophy of 'natural rights' and the social contract to nineteenth century idealism and the conception of the State as a moral organism. As John Dewey puts it: 'In a genuine sense Kant marks the end of the older age in philosophy. He is the transition to distinctively modern thought.'

There is not much that is original in Kant's political philosophy. Rousseau and Montesquieu were the two great formative influences in his political thinking. Dunning states the matter in these words: 'His doctrine as to the origin and nature of the State is merely Rousseau's put into the garb of Kantian terminology and logic; his analysis of Government follows Montesquieu in like manner (*17 : 131*)'.

One of the greatest contributions made by Kant to the idealistic philosophy is his approach to politics from the point of view of morals. Very early in his speculation, Kant discovered the necessity of pursuing political enquiry under the guidance offered by moral

enquiry. Political philosophy he regarded as meaningless except as treated in relation to moral philosophy.

In the field of morals as well as in politics, Kant adopted Rousseau's doctrine of the 'moral will' and made it the cornerstone of his whole thinking. The man who is truly free, he said, is the man who is morally free. The phrase 'autonomy of the moral will', coined by him, has become a household phrase among political thinkers. Freedom, as conceived by him, does not mean absolute and unqualified freedom. It is not synonymous with the power of satisfying every desire, whether reasonable or unreasonable. It does not mean licence. The only kind of freedom to which a person has a right is 'freedom qualified by respect for others, and controlled by universal laws (*79 : Vol II, P. 86*).' Thus freedom and right, in Kant's thinking, are in effect coincident. Commenting upon it, Vaughan says, 'Right expands into freedom and freedom expands into Right'.

Respect for personality is the core of Kant's philosophy. Every individual, he tells us, is an end in himself, and no one is to be treated as though he were simply a means to another's end. The categorical imperative which should guide the actions of every rational individual is : 'Act in conformity with that maxim, and that maxim only, which you can at the same time will to be a universal law'. The individual should not aim at particular advantages and satisfactions, but at those ends which are of universal application. His will is free only when it wills rational or universal objects. Such a will is the good will and the fulfilment of that will should be the supreme object of a person's endeavours. In Kant's words : 'Nothing can possibly be conceived in the world or out of it which can be called good without qualification except a good will'. The state exists in order to promote such a will and check all selfish desires. Green was influenced by Kant's doctrine of the moral will by virtue of which man always wills himself as an end.

From the supreme worth and dignity of man Kant deduces liberty and equality as the necessary attributes of all rational beings. His passion for individual liberty is so great that he is not prepared to sacrifice it on the altar of the State. He realises that justice demands the subordination of mere individual freedom to the demands of social existence. But that does not mean that Kant is willing to abandon the liberty of the individual. 'It is clearly a conflict in his mind between the claims of justice and the claims of individual freedom. He does not see his way fully to reconcile the two. He is too honest to sacrifice either (*79 : 80*).'

Passing from the ethical foundations of Kant's political philosophy to definitely political questions, we note that Kant deals with the following subjects :

(*a*) the social contract ;

(*b*) the relation between society and the State, between civilization and culture ;

(*c*) property ;

(*d*) punishment ;

(*e*) rights and duties ;

(*f*) the sphere of State action ;

(*g*) the right of revolution ;

(*h*) forms of government ; and

(*i*) world peace.

A brief exposition of Kant's views on these topics will serve to distinguish the idealism of Kant from that of his followers.

(*a*) *The Scoial Contract.* Kant does not concern himself with the question relating to the historical origin of the State. He considers it as irrelevant and dangerous. Nevertheless he keeps the social contract on the ground that no man can rightfully be compelled to obey a law which he has not accepted of his own accord. But it is kept as a 'mere idea', as in the case of Rousseau. By this contract, men 'surrender their eternal freedom in order to receive it immediately back again as members of a Commonwealth' ; they 'abandon their wild lawless freedom in order to substitute a perfect freedom....a freedom undiminished, because it is the creation of their own free legislative will ; but a freedom which nevertheless assumes the form of a lawful dependence, because it takes its place in a realm of Right or Law (*3 : 26*)'. This contract is in the nature of a moral convenant by means of which people surrender their lawless freedom for a higher freedom. It is at the same time a constitutional compact by means of which a form of government is established, which binds those who administer it and those to whom it is administered. It does not mark a transition from a 'state of nature' to a social state, but from a less organised form of social life to a more articulated form 'from a society resting on custom and tradition, to a society based on written law or, at the very least, on oral law universally known and accepted(*79 : Vol. II, P. 80*)'.

It is worthy of note that none of the idealists following Kant uses the conception of the social contract even as a 'mere idea'.

(*b*) *Society and the State, Civilisation and Culture.* English and American writers use the term 'State' to denote society in its political aspect. Sometimes they use it as virtually equivalent to Government, 'as a special agency operating for the collective interests of men in association (*14*).' But the German usage is entirely different. To German thinkers, society is a technical term which means something empirical or external. The State, on the other hand, is conceived as a moral entity, 'the creation of self-conscious reason operating on behalf of the spiritual and ideal interests of its members'. Its function is cultural and educative. Even when it intervenes in material interests, as it does in regulating law suits, poor laws, protective tariffs, etc., its action has ultimately an ethical significance: its purpose is the furtherance of an ideal community (*79: Vol. II, p. 80*).'

A similar distinction is made between civilisation and culture. Civilisation is a natural and largely unconscious growth when people live close together. It is external. Culture, on the other hand, is deliberate and conscious. It is internal. It is the working of man's inner spirit. Morality is necessary for its development. 'Culture involves the slow toil of education of the Inner Life. Attainment of culture on the part of an individual depends upon long effort by the Community to which he belongs. It is not primarily an individual trait or possession, but a conquest of the community won through devotion to duty (*79: Vol. II, p. 80*).'

The above distinction between society and the state, civilisation and culture, is found only in its beginnings in the writings of Kant. The fuller development comes with Hegel and his successors.

(*c*) *Property.* Like the idealists in general, Kant accepts the institution of private property. He does not adopt the Lockian teaching that a thing with which a person mixes his labour is his. He rejects the extreme individualistic doctrine of property as untenable. The ground on which he supports private property is that it is necessary for the expression of man's will. But mere will does not entitle a person to any thing or every thing. In the appropriation of any object, man should take care that he does not, either by

will or act, do any direct injury to his neighbour. In other words, property requires the express sanction of those who are immediately interested in it. It is a derived right and does not belong to man by nature.

(*d*) *Punishment.* Kant realises that the maintenance of the supremacy of justice through a system of rights necessitates compulsion and punishment. Right must be upheld for its own sake. Therefore, the primary object of punishment is to punish. Kant does not defend punishment, either in theory or in practice, as a means of striking terror into the hearts of prospective criminals. Neither does he justify it as primarily a means of reforming the criminal of the moment. Both these views—the deterrent and the reformatory—in Kant's judgment, do scant justice to the personality of the individual. Instead of treating men as ends in themselves, they treat him as mere instruments of statecraft.

(*e*) *Rights and Duties.* As is to be expected, Kant lays much stress on the rights and duties of the individual. His interpretation of rights is in the spirit of Rousseau. Right is synonymous with moral freedom. 'The only original right', he says, 'belonging to each man in virtue of his humanity is freedom'. Elsewhere he writes, 'Liberty consists in the power to do anything which inflicts no injury on one's neighbour'.

A right in politics is not merely self-regarding. It does not mean the following of individual caprice. As in ethics, so in politics, right is necessarily correlative to wrong. It carries with it a corresponding duty. The individual owes a duty to himself, to other individual members of the State, and to the State as a whole. A right is never solely a privilege. It is also a burden and an obligation : an obligation which under certain circumstances, I may be punished for violating or neglecting (*79*).

As between rights and duties, Kant's emphasis is on the latter. Bernhardi says, 'While the French people in savage revolt against spiritual and secular despotism had broken their chains and proclaimed their rights, another quite different revolution was working in Prussia—the revolution of duty', and the apostle of this revolution was Kant. Duty is to him self-imposed. It is purely a matter of inner consciousness. It stands for the correction of the lower empirical

self by the higher rational self. Kant admits that this concept of duty is silent as to the specific duties of man in any given situation. It is a concept without a content. Being vague in its nature, it is easy to give it a meaning to suit one's own predilections. Thus we find that Bernhardi equates moral duty with universal military service.

(*f*) *The Sphere of State Action.* Kant is not a blind worshipper of the State. The general tendency of his political philosophy is individualistic. Hence we find that he does not assign a wide sphere to State action. Everything legal and political is conceived by him as external and, therefore, not coming within 'the strictly moral realm of inner motivation.' Yet he is not willing to leave the State and its law as wholly immoral in their character. The natural motives of man, he considers, are egoistic. They are love of power, love of gain, and love of glory. They result in 'the war of all against all.' It is not the business of the State to promote moral freedom directly. Only the individual can do that. The State should 'hinder the hindrances to freedom ; to establish a social condition of outward order in which truly moral acts may gradually evolve a kingdom of humanity.' The State is justified in repelling whatever force is opposed to freedom. The force used by the State is different from other forms of force. 'It has a sort of sacred import ; for it represents force consecrated to the assertion and expansion of final goods which are spiritual, moral, rational (*14*).'

Kant's attitude to the State is on the whole 'somewhat grudging and individualistic (*2 : 25*).' His view that the primary business of the State is to hinder the hindrances to freedom was adopted by both Green and Bosanquet, but not by Hegel.

(*g*) *The Right of Revolution.* Having lived during the days of the French Revolution, Kant's chief political work, ***Rechtslehre***, published in 1797, bears on it the influence of the Revolution. Kant had a horror of revolution and, in his horror, he preached 'a stagnation which even Burke would have regarded as excessive (*79 : 82*).' The existence of the State is so essential to man for the realisation of his moral purpose that there can be no right of revolution. The overthrow and execution of the sovereign, says Kant, is 'an immoral and inexpiable sin like the sin against the Holy

Ghost spoken of by theologians, which can never be forgiven in this world or in the next'. If the constitution is defective and changes are to be made, they should be made 'only by the sovereign itself, through reform, not by the people, through revolution.'

On this question of resistance to the State, Kant follows the true German tradition. Hegel and, to some extent, Bosanquet adopt Kant's point of view, while Green takes a different line altogether.

(*h*) *Forms of Government*. Kant discusses three forms of State—autocracy, aristocracy, and democracy—and two forms of government—republican and despotic, 'according as there is or is not a seperation of the legislative and the executive power (*17 : Vol,III,p. 133*)'. Any form of government which is not representative Kant discards as irrational; but the function of representative may be vested in King or nobility as well as in elected deputies (*17 : Vol. III, p. 133*).' It is interesting to note that the German idealists as a whole, in spite of their advocacy of the general will and the supremacy of the people, find it impossible to abandon their superstitious reverence for monarchy. Kant in particular, 'an aged professor in a royal university of the Kingdom of Prussia', could not bring himself to believe that the King was merely a chief executive; he had something at least of sovereignty inhering in him.

(*i*) *World Peace*. Kant was enough of a child of the eighteenth century to adopt cosmopolitanism as his creed. Nationalism as yet was a negligible factor so far as Germany is concerned. Kant conceived humanity as a whole and advocated a federal league of nations, 'each subject to the adjudication of the general collective will (*3 : 27*).' He believed that enduring peace could be secured among nations on the basis of such a federated union of mankind. The title of one of his important political works is *For Perpetual Peace*.

Criticism of Kant's Theory of the State

The following are the chief criticisms to which Kant's theory of the State is open :

(*a*) The ideal that Kant sketches is, as said above, an ideal without

a content. It is too abstract and intellectual. It does not make an adequate use of the empirical method. As Dewey remarks, 'a gospel of duty separated from empirical purposes and results tends to gag intelligence.' Abstract rights and abstract duties do not have much value in practical politics. They do not further progress and happiness. 'The utilitarian standard of intelligent self-interest is hardly an ultimate idea; nevertheless, it at least evokes a picture of merchants bargaining, while the categorical imperative calls up the drill sergeant'.

(b) The German interpretation of the State and culture, including that of Kant, is liable to much abuse. In a sense it is right to speak of the State as the body which embodies the spirit of the people. But German thinkers use this idea too literally. The Great War *e. g.*, was regarded by the Germans as 'an outer manifestation of a great spiritual struggle'. They regarded World War II in the same light.

(c) In spite of his abundant use of the conception of 'moral freedom,' Kant never made up his mind whether he wanted to use freedom in the ordinary sense of 'being left alone' or in the higher sense of providing opportunity for the development of man's higher faculties. 'He failed' says Vaughan, 'because he hovered between two entirely different conceptions of the state.' He wavered between eighteenth century individualism and later idealism.

Fichte (1762-1814) was a practical idealist. His political philosophy was largely influenced by the historical events of his day. He began as a cosmopolitan and ended as a nationalist. The disasters of the Napoleonic conquest were responsible for this change.

As far as his theory of the State is concerned, he follows Rousseau very closely in his earlier works. The individual and his rights occupy the central place. In the later works, there is a decided shifting of interest. The people and the nation are placed at the centre of the scene and a scheme of State socialism is set forth as the ideal of a national State.

In Fichte's writings, as in those of all idealists, the State is a necessary implication of the human self. There are traces of the social contract theory in Fichte's view of the State but the conception of natural rights and a pre-social state of nature is absent. The only absolute right is the right to exercise one's rational will. While Kant

interpre ts will as an application of reason to action, Fichte interprets reason as the expression of the will.

Unlike Hegel and his followers, Fichte takes care not to merge the individual in the sovereign State. In this respect he is like Kant and Green. He repudiates Rousseau's dictum that, in entering the State, each individual gives up himself and all his possessions to the collective whole. In his *Closed Commercial State*, one of his later works, Fichte states the function of the State to be, 'To give to each for the first time his own, to install him for the first time in his property, and then first to protect him in it'. Like Hegel, he considers it the duty and mission of the German State to contribute to the cause of the spiritual freedom of humanity.

On the question of property, the starting point of Fichte is much the same as that of Kant, but he goes beyond the cautious limits laid down by his distinguished predecessor. Property, says Fichte, is not mere possessions. It has *deep* moral significance. It means the conquest of nature by man's will, the subjugation of the non-ego by the ego. It has a social basis and aim. 'It is an expression not of individual egotism but of the Universal Will. Hence it is essential to the very idea of property and of the State that all the members of society have an equal opportunity for property'. Hence also it is the duty of the State to secure to every one of its members the right to work and the reward of his work. Without such right, the supreme right of every man to moral self-determination becomes a mockery.

In his *Closed Commercial State*, Fichte supports State Socialism. He supports it not on economic but on moral and idealistic grounds. Every individual has a right to labour and to a certain amount of property, for the development of his moral pesonality. 'The ultimate goal is to him a universal State as wide as humanity and a State in which each individual will act freely, without State-secured rights and State-imposed obligations'. But before this period is reached, it is necessary to pass through a period of the nationalistic closed State. Thus, as Dewey remarks, the moral individualism of Kant becomes an ethical socialism in the case of Fichte. According to Hallowell, as Fichte grew older, he accepted more and more a degree of state control and Collectivism. Like Kant, Fichte upheld the independent position of the hereditary monarch in a democratic constitution.

Wilhelm Von Humboldt. With Kant, Humboldt believes that the State originated in a contract among men for their mutual benefit.

The State is not an end in itself. Its primary purpose is to subserve the end of man, which is the highest well-balanced development of his powers as a whole. Humanity cannot perfect itself apart from the fullest development possible for each individual.

The action of the State should not extend beyond 'the provision of security to its individual citizens in person and property. It should never undertake the positive promotion of their welfare. It should not concern itself with education, religion, and the improvements of morals. The development of character is a direct concern of the individual'. Humboldt is thus an individualist in his attitude toward the State. Unlike many other individualists he is not enamoured of democracy.

Humboldt defends war when it is waged in defence of the community. In spite of its horrible results, he considers war as having a very salutary influence on the development of human character.

Hegel (1770-1831). Among German idealists Hegel has had the greatest influence in his own country. There are many who claim that he, more than anyone else, was responsible for the Great War of 1914-18. The philosophy expounded by him elevated the State to a mystical height and held that the German people had a divine mission to fulfil in their relation to the rest of the world.

Although proclaimed to be a typical idealist, Hegel was in a genuine sense a realist. 'He had no patience with the "Idea" or the "Absolute" whose foundations are laid in heaven'. His ideal State was not something to be realised in the distant future, but was practically identical with the German State of his day. In his attitude to the State, Hegel was an Absolutist, almost a 'Brutalist'.

The starting point of Hegel's philosophy is that the real is rational and the rational real. Essentially God or the Absolute is Thought and Thought is the ultimate reality. Thought is life and Life is thought. (Condensed from Hallowell).

1. *Kant and Hegel.* Hegel's political philosophy consisted in taking over the thought of Kant and Fichte and adapting it to the conditions of his day and to his own genius. Like his great precursor, Kant, he based his system upon a spiritual idea. But, in the handling of that idea he adopted a totally different method. While Kant had adopted the *a priori* or deductive method, Hegel pursued the historical and evolutionary method. As Vaughan writes : 'Analytic criticism is the dominant idea of Kant ; the keynote of Hegel's achievement is evolution'. To quote the same writer again, 'Kant started

from the individual consciousness, Hegel from the world of externalised knowledge and of organised institutions'. To the end of his life Kant upheld an individualistic conception of State action, in spite of his idealistic thinking. Hegel rejected individualism *in toto* and advocated a conception of freedom which was more positive and objective than that of Kant. Freedom to Hegel means expansion. 'It consists in the will to make my natural self adequate to the measure of the fulness of my thinking self (*3 : 27*).' It is creative. 'It expresses itself in a series of outward manifestations—first the law, then the rules of inward morality : and finally the whole system of institutions and influences that make for righteousness in the national State(*5 : 27*).'

Hegel glorified the national State and rejected international morality without any ceremony. Kant, on the other hand, was a believer in world peace and in a federal league of nations. Both, however, were firm believers in monarchy and they distrusted representative institutions. Hegel rejected the contractual conception of the State, in which Kant had believed, and taught that the State was a 'natural necessity'. In this respect he was more loyal than Kant to the basic principles of idealism laid down by Greek thinkers.

(2) *Fichte and Hegel.* Fichte, we have said already, marks the transition from eighteenth century cosmopolitanism, as seen in Kant, to nineteenth century nationalism, embodied in Hegel. In him also we find an attempt to blend the German philosophy of the State with its philosophy of history. In his later writings, he develops the idea that a divine purpose is revealed in and through human history, particularly German history. He attaches increased significance to nationalism in general, and to German nationalism in particular. The State is to him an organ of divinity. Therefore, patriotism is synonymous with religion.

The German people, Fichte claims, are the only truly religious people in the world. Therefore they alone are truly capable of patriotism.

These basic ideas of the State and of history are taken over into the philosophy of Hegel, and these appear in a more accentuated form in such works as *Outlines of the Philosophy of Rights* (1820) and *Outlines of the Philosophy of History* (1822-31).

(3) *The Philosophical Implications of Hegel's Political Theory.* As in Kant and Fichte, so in Hegel, political theory is developed as part of a comprehensive system of philosophy. The keynote of this

philosophy is that 'what is rational is real; and what is real is rational'. Although the historical and evolutionary method is used by Hegelat great length, it is used as an appendix to a vast body of abstract speculation.

All three writers had for the starting point of their respective theories the teaching of Rousseau, that the idea of freedom is the essence of man. Paraphrasing Rousseau, Hegel says, 'Freedom is the distinctive quality of man. To renounce one's freedom means to renounce one's humanity. Not to be free is therefore a renunciation of one's human rights and even of one's duties.' Once again he writes, 'The freedom of nature, the capacity of freedom is not the actual freedom, for nothing short of the State is the actualisation of freedom. The notion of freedom must not be taken in the sense of the casual free will of each individual but in the sense of the reasonable will, the will in and for itself *(5 : 220-21)*.'

Freedom being the essence of man, Hegel conceives man's will as free. Kant and Fichte had conceived it as 'an attribute or faculty of an individual person *(17 : Vol. III, p.1 55)*.' But Hegel interprets it as one aspect of pure abstract intelligence, of '*Geist*'. It is 'eternal universal, self conscious self-determining *(17 : Vol. III, p. 155-56)*'. In Hegel's phraseology, 'The idea of the will, as a last abstraction, is the free will that wills the free will.'

Will, then, is free and absolute and manifests itself in various thought forms by applying right reason. The first of these forms is law ; the second is inward morality and the third is 'the whole system of institutions and influences that make for righteousness in the national State *(2 : 27)*'. Under Law, Hegel discusses the idea of personality, property and contract, and shows that all of them are manifestations of the free will. A living creature becomes a person only so far as it exercises free will to be a person. Material objects are property because they are expressions of man's free will and have no will of their own. A slave is little better than property because he lacks the free will to be free. Throughout his discussion, Hegel judges laws and rights 'not by a fixed standard, but with reference to the various stages of culture and self-consciousness that history reveals *(17 : Vol. III, p. 157)*.'

The second phase is subjective morality. Here Hegel discusses 'those aspects of self-determination in which the individual is affected by a consciousness of other like individuals *(17 : Vol. III, p. 157)*.'

The third and final phase which Hegel conceives as the highest of

the three is *Sittlichkeit,* variously translated as 'Social Ethics', 'The Ethical System,' 'the moral life', and 'Conventional or Customary Morality'. This is the sphere where the mere externality of law and the mere inwardness of morality are reconciled. It is the sphere of concrete morality or conduct. It includes law, custom, sentiment, the literal law, and moral will. It is the opposite of the Kantian principle of the pure good will. In obeying the customary morality of the community which is the working of a universal cause, the free will of the individual is fully realised.

It projects itself beyond itself, and in so doing reaches its perfection. In the philosopher's words, 'What law (Recht) and abstract morality (Moralitat) are not, custom (Sitle) is, namely, spirit (geist); and Spirit is unity of the individual and the universal (*17 : Vol. III, p. 153*).'

The successive phases of this final phase of the moral consciousness (Sittlichkeit) are the family, the civil or Bourgeois Society, and the State.

The Family. Hegel's views on this question are the conventional views of his day and are for the most part incorporated into the teachings of Green. The modern family is a necessary element of society and the State, and is at the same time distinct from both. Like other institutions, it represents an element of mind. It reveals an intelligent purpose. It is not founded on mere feeling or on mere contract. It has an ethical and public side. On the ethical side it implies monogamy and equal and permanent relations between the husband and wife. The non-monogamous family is unethical. The modern monogamous family represents a higher stage of civilization than the ancient tribal system or any other system in which 'the whole bond of union rests on merely natural feeling, kindness, generosity, or affection (*5 : 250*).'

It is a mere confusion of relations to 'assimilate the State to a family by a sort of levelling down of the former or levelling up of the latter (*5 : 250*). Both are expressions of mind, but are distinct in their nature. Therefore 'their respective characteristics must not be slurred or scamped (*5 : 250-3*).'

The Civil Society. This presents itself to Hegel as 'the opposite extreme of life and mind to that embodied in the family (*5 : 252-3*).'

The Civil society stands for the economic and industrial world in which men appear as bread-earners. For the successful pursuit of their economic interests they demand police functions and adminis-

tration of justice. A society of this kind does not materially differ from the State. Yet Hegel insists on this distinction, partly with a view to giving an artistic symmetry to his system by dividing it into three stages and giving the highest place to the State. The Civil Society, to Hegel, 'is not a separate society, but only an appearance within a larger system (*5 : 355*).' It is only within the State proper, and resting on its solid power, that such a world as that of Bourgeois society could arise or be conceivable. 'Its priority to the State is like that of the family, the priority of comparative narrowness or simplicity, of dealing with fewer factors and of representing human nature in a more special, though necessary, aspect (*5 : 355*).'

The third phase is the Political Organisation or the State in the strict sense of the term.

The Idea of Development. From the above treatment of Hegel's philosophical tenets, it is clear that the idea of development is germane to them. The world of nature is interpreted as providing increasing outward expression to the spiritual instincts within man. The law of evolution in Hegel's theory is not a mere mechanical law, but is spiritual. 'It is the evolution not of mind from matter, but of matter from mind. Its upshot is not to materialise reason, but to spiritualise nature (*79*).' Reason and matter, nature and spirit, are not treated as antithetical conceptions. In one sense, reason and matter, nature and spirit, are co-ordinate elements in the world of our experience. In another, and a fuller sense, reason is all in all (*79*).' The development which Hegel traces is not the development of events or of institutions, but of the speculative idea. The idea—and not the facts—is the real object of our study. 'The idea, like all other things, has a history; and it is only by following its history, its growth in time, that its true nature can be understood (*79*).' The two central ideas of Hegel's system are :

'1. There is nothing in the whole world of men's experience which is not the creation of reason ;

2. Reason being essentially a principle of growth, no one of its manifestations is intelligible, unless it be studied along the lines of its continuous development.'

Progress and Freedom. Progress is to be measured in terms of a fixed end, which is the realisation of the spirit in accordance with the principle of freedom. Freedom is an idea. It is the ideal to be realised by all men ; progress means the gradual realisation of the idea of freedom. Freedom does not mean the mere absence of external

restraints. It is not synonymous with the liberty of the individual to do what he wills with his own faculties and his own possessions. It stands for the free development of man's power—moral, intellectual and spiritual—according to the fundamental laws of his own nature.

History. To Hegel history is the pilgrimage of the spirit of man in search of itself. History is reasonable. The course is governed by reason, or Providence. The individual plays an important part in history which through the community provides ample opportunity for the free development of his personality. Man's very existence as a moral being demands the community.

World history is the world judgment (Hegel). Judgment, as used by Hegel, means victory for one people and defeat for another. Victory is the final proof that the world spirit has passed from one nation to take up its residence in another. To be defeated in such a way that a nation is obliged to take a secondary place among nations is a sure sign that divine judgment has been passed upon it. This is the way that God works in human history. World history reveals four distinct stages in the realisation of the idea of freedom. These stages are marked respectively by the ascendency of the Oriental, the Greek, the Roman, and the German state systems. The Orient knew, and to the present day knows, only the *one* (*i.e.* the despot) is free, the Greek and Roman world that *some* are free, the German world knows that *all* are free (*34 : 104*).'

Hegel's Theory of the State. Hegel treats the State as the system in which the family and the civil society 'find their completion and their security (*5 : 159*).' The State is the individual in history. It is to history what a given individual is to biography. It is the actualisation of freedom because it is the embodiment of reason. It is the image of a rational conception (*5 : 26*); a hieroglyph of reason ; the perfected rationality. From the point of view of will, it is the incarnation of the general or real will. Therefore, true freedom for the individual consists in obeying the laws of the State and in cultivating 'the every-day habit of looking on the commonwealth as our substantive purpose and the foundation of our lives (*5 : 267*).'

The State represents the best in the individual will. It has a will and personality of its own, apart from and superior to the wills and personalities of the individuals who compose it. The individual can attain his higher freedom only as a member of it. Rights are derived from the State and no individual has rights against it. The State has an 'absolute fixed end in itself.' It is the unity of the

universal and individual will, or, in other words, objective and subjective freedom; and the unity of universality and particularity is perfected rationality. As such, the state is the eternal and necessary essence of spirit (*17: Vol. III, p. 159*).'

From these promises Joad draws three somewhat paradoxical conclusions.

(*a*) The State can never act unrepresentatively ; thus the policeman who arrests the burglar and the magistrate who locks him up express the real will of the burglar as a member of the State to be arrested and locked up.

(*b*) The bond which binds the individual to other individuals in the community and to the State as a whole forms an integral part of his personality. Therefore, he cannot act as an isolated unit but only as an integral part of the State. The will with which he acts is not a purely individual will but a part of the will of the State.

(*c*) The State contains within itself, and represents, the social morality of all its citizens. This does not mean that the State is itself moral, or that it is bound by moral relations to other States or to any groups within the State itself. It is supra-moral.

All this easily leads to the absolutism, omnipotence, and infallibility of the State. The State is God on earth. It is the march of God in history. 'It is the divine idea as it exists on earth'. 'It is the divine will as the present spirit unfolding itself to the actual shape and organisation of the world.' It enriches the personalities of its individual members, purging them of petty aims and all selfishness. In Hegel's words, 'It carries back the individual whose tendency it is to become a centre of his own into the life of the universal substance'. The State to Hegel is the embodiment of "real freedom." It is "the actualisation of freedom" ; the crystallisation of Social Morality.

5. *War and Internationalism.* The nation State is the object of Hegel's veneration. He does not want it to be absorbed in the whole of humanity. An international federation he considers a mere Will-o-the-wisp, because, in his judgment, the essential principle of the nation State is struggle, and this is in accordance with the divine purpose. The State can attain its uniqueness and perfection only in relation to other States. Only one nation at a time can be the fullest realisation of God. The movement of God in history is seen in the way in which supreme power passes from one nation to another. War is

the best illustration of such a flight of the divine spirit in its outward movement. It effectively displays the 'irony of the divine idea'. It is to national life what the winds are to the sea, 'preserving mankind from the corruption engendered by immobility' (Hegel). It is a clear demonstration of the vanity of all merely finite interests. It destroys the selfish egoism of the individual which makes him claim his life and his material goods as belonging to himself or his family. 'The State of war', says Hegel, 'shows the omnipotence of the state in its individuality'. War is an evil, but not an absolute evil. Hegel does not aim at exalting war, but at justifying it.

International law is properly no law, since there is no superior power which can enforce its will upon the State. It represents merely certain usages which are accepted so long as they do not come into conflict with the supreme purpose of State. Against the absolute right of the 'present bearer of the world spirit', the spirits of the other nations are absolutely without right. 'The latter, just like the nations whose epochs have passed count no longer in universal history' (Hegel). 'Since they are already passed over from the standpoint of the divine idea, war can do no more than exhibit the fact that their day has come and gone. World history is the world's judgment seat'. (Dewey)

6. *Constitution.* According to Hegel. the State manifests itself as a constitution or internal public law, as external public law, and as world history. Each one of these reveals a progressive realisation of freedom—the synthesis of the universal and individual will. The three important powers in Hegel's rational State are the legislative, the administrative (including the judicial), and the monarchic. Of these three the monarchic is the most important. It is the unifying force in the Sate, which prevents the other two from disrupting the State. Perfect rationality is realised in constitutional monarchy because it comprehends and blends the best elements in the three traditional types of State—monarchy, aristocracy, and democracy. In a constitutional monarchy the prince represents the one, the administration the few, and the legislature the many.

Sovereignty, as a philosophical conception, belongs to the State as a whole. It does not reside in any one element. It resides only in the organised whole acting as organised whole. Nevertheless, in practice, sovereignty means determination by some person, though this may mean only the signing of one's name. Such a sovereign, says Hegel, is the monarch; and the monarchic principle is thus present and active in every State.

Sovereignty must therefore be assigned scientifically to the monarch, and not to the will of the people, which is vague and indefinite.

The legislature includes the prince, the administration, and the people. Without the participation of the first two elements, the unity of the State is sure to be destroyed. The popular element in the legislature must be representative of interests and classes, rather than of masses of individuals. 'The corporations or Trade Societies have also an important place directly, by their touch with the departments of the executive government (*5 : 262*)'.

As for the division of power the legislature lays down general principles, the executive applies them to particular cases and the prince brings 'to a point the acts of the state by giving them, like the dot on the i—the final shape of individual volition (*5 : 263*).' True freedom is possible only in a monarchy of the kind described by Hegel. Landed aristocracy is best fitted to govern because of its economic independence.

(7) *Theory of Property.* Hegel supports the institution of private property on the familiar ground that it is the material means upon which the individual will can exert itself. It is essential to the fulfilment of personality.

(8) *Theory of Punishment.* Hegel, like Kant, looks at the question from the point of view of right and morality. When a right has been violated, says Hegel, it is the duty of the State to reassert it by means of compulsion and punishment, if necessary. The primary ground of punishment is not public security or the violation of a contract, explicit or implied, between the criminal and the community. Punishment simply means that right has been defied and that the only way of vindicating it is by 'a public redressal of the outrage done to the individual in the first place and, through him, to the community and the law of justice in the second'. Punishment is as much a right of the criminal, as it is of the community. Not to punish a criminal but to be lenient with him is to treat him as an insane person or an idiot. To put him down on the bare ground of public security is to regard him as a beast. Punishment gives the criminal his due, in a good sense as well as in a bad. It is a right of which he should not be defrauded.

(9) *Value of Hegel's Work.* To C. E. Vaughan we owe the following points :

(*a*) Hegel grasped the connection between politics and morals

more clearly, and handled it with far greater insight than any of his predecessors. He set aside as abstract and unreal the impassable barrier which previous thinkers had fixed between the moral and political growth of man, as well as Kant's distinction between men's speculative reason and his practical.

(*b*) He exposed to merciless criticism the popular belief in a sharp cleavage between the individual and the State. The State, he showed, includes the whole circle of man's life. The individual, therefore, cannot be conceived apart from the community of which he is an intrinsic part. He is what he is as a member of it. Hegel denied the impossibility of a purely individual morality and in so doing, corrected a profound mistake made by Kant. He rejected the individualistic theory of the State.

(*c*) He was the first thinker to grasp the full scope of the historical method.

(*d*) He was the first to recognise the debt of the individual conscience to the instinctive sense of the community.

(*e*) He was the first to ground the idea of progress, not on accidental circumstances, but on the very nature of reason. Progress means to him change according to law which at every step is in conformity with the law of reason.

(10) *Hegel's Limitations.* Notwithstanding these valuable contributions, Hegel's theory is subject to serious limitations :

(*a*) It easily leads to the absolutism and omnipotence of the State. If the seventeenth century thinkers extolled the Divine Right of Kings, Hegel extolled he Divine Right of the State. As Barker remarks, Hegel exalted the national State to a mystical height. The State is conceived by him as an end in itself and the citizen is called upon to fall down and worship it. Such sacrifice of the individual to the State is not in consonance with our ideas of liberty and democracy. Hegel's doctrine means in practice 'Spiritual servitude, bodily conscription, wars for national interests, and the devotion of human beings to Leviathan in peace and Moloch in war (*6 : 145*)'. Hegel substitutes loyalty to the State for loyalty to God.

(*b*) In spite of his advocacy of the historical method, Hegel deals with the State not as a historical phenomenon but as an

intellectual concept. He constructs his view of the State on the basis of his philosophical speculations and, curiously enough, identifies the ideal State with the German State of his day. In politics especially, he insists that the actual is the rational. 'The task of philosophy', he says, 'is to comprehend that which is, for that which is, is reason'. The practical result of this point of view is a superstitious reverence for the established order and 'an undue distrust of all that threatens to modify or disturb it.' (Vaughan)

(c) There is in Hegel 'a disposition to applaud the existing fact just because it is a fact and to deify successful brutality just because it has succeeded'. It is no wonder that Hegel's disciples in Germany transformed his Idealism into Brutalism.

(d) Hegel's interpretation of world history and of the divine spirit is least convincing. We cannot help feeling that it is forced to fit into Hegel's preconceived notions with a view to glorifying the German State.

(e) Green criticises the Hegelian conception of the State as a realisation of freedom in the following words : 'To an Athenian slave, who might be used to gratify a master's lust, it would have been mockery to speak of the State as realisation of freedom, and perhaps it would not be much less to speak of it as such to an untaught and underfed denizen of a London yard with gin shops on the right hand and on the left... Hegel's account of freedom as realised in the State does not seem to correspond to the facts of Society as it is, or even as, under the unalterable conditions of human nature, it ever could be *(29 : 8)*'. The real flaw in Hegel's theory lies in mistaking tendencies for accomplished facts.

(f) Hegel's denial of the principles of State morality and of the sanctity of international law is not in keeping with idealism, as commonly understood.

(g) Hegel identifies the State with Society. This is a profound mistake. However closely inter-related the State and society may be, the distinction between the two should be kept clearly in view if we are to avoid State despotism.

(h) The Hegelian theory as a whole is abstract and metaphysical and far removed from the realities of life.

Hegel's Disciples. Certain elements in the Hegelian conception of the State were advocated in an exaggerated form by later German political writers and militarists, notably by Nietzsche, Treitschke, and Bernhardi. 'All these taught the indispensability and even the nobility of war ; they deified and apotheosized the State ; they maintained that it sets its own standards of morality ; that it is not bound by the rules of international law except in so far as it chooses to be bound by them ; and that every State is itself the judge of its own international obligations, etc. (*23 : 232-33*).' Treitschke held that the State was power and that no limits should be placed on its activities. The first duty of the State, he said, was to make itself strong and powerful. A State with a superior civilisation, he believed, had a right and duty to impose its civilisation upon those less cultured. He wanted the State to be self-assertive, aggressive, and militaristic. He had nothing but contempt for the smaller States. He argued that the progress of civilisation could come about only through the State and that individual effort, unaided by the State, amounted to little. Thus the high-sounding political theory of Hegel resulted in Militarism and even Brutalism.

Influence of the German Idealists. Leaving out of account Hegel's disciples mentioned above, who have no right to be styled idealists, we find that Kant, Fichte, and Hegel have exerted much influence on Western Political Thought. Dunning sums up their influence as follows :

1. The conviction common to all of them was that 'the vital truths of political science were to be reached rather through the processes of pure thought than through investigation of experience (*17 : Vol. III, p. 166*).'
2. They all clothed 'certain institutions and aspirations of contemporary politics with the sanctifying garb of a mystic form and nomenclature (*17 : Vol. III, p. 166*).'
3. They developed to its utmost limits 'the idea of will as the ultimate element in politics and law (*17 : Vol. III, p. 167*).'
4. 'Contract, as the formula through which the individual will created social and political authority, received at the hands of Kant and Fichte the highest degree of philosophical finish (*17 : Vol. III, p. 167*).' Hegel dropped it entirely in his explanation of the State (*17 : Vol. III, p. 167*)'.
5. 'All of them save Humboldt ascribed unmeasured majesty and excellence to the State (*17 : Vol. III, p. 168*).'

6. 'The doctrine of nationality as a fundamental principle of political organisation received considerable stimulus from both Fichte and Hegel (*17 : 169*).'

The English Idealists. The principal among English Idealists were Sir Henry Jones, T. H. Green, F. H. Bradley, William Wallace, R. L. Nettleship and B. Bosanquet.

(1) *T. H. Green* (1836-1882). *Sources of Green's Thought.* The sources of his thought are Plato, Aristotle, Rousseau, Kant and Hegel. With the Greek philosophers Green agrees in regarding the State as natural and necessary and the life of the individual as an intrinsic part of the life of the community. At the same time he differs from them as regards the aristocratic view of life held by them. While the life of self-satisfaction or self-realisation was viewed by Greek thinkers as belonging to the few, Green adopts the democratic point of view that the life of citizenship can be realised by all who are capable of a common interest. As between Plato and Aristotle, Green was influenced more by the latter than by the former. Like Aristotle he completes his ethics by his politics and believes that the supreme function of the State is to make it possible for its individual members to realise a good that is a common good. In his ethics, Green speaks of 'self-satisfaction' or 'self-realisation' as the end of conduct; and in his politics he constantly refers to the 'common good as the supreme good.' All these terms are convertible in his thinking.

From Rousseau, Green, like Kant and Hegel, borrows the conception of 'moral freedom' as the peculiar and distinctive quality of man. He assumes the free will of man—although within certain limits—and distinguishes between 'negative' and 'positive' freedom, between freedom in the generic and freedom in the particular sense, between 'juristic' and 'spiritual' freedom and between the 'empirical' ego and the 'pure' ego. Freedom of the former kind—negative, generic, juristic, and empiric—means simply self-determination or acting on preference. It may even mean following one's own sweet will and pleasure. Freedom in the latter sense—positive, particular, spiritual, pure, etc.—stands for the increasing tendency for the objects of reason and the objects of will to coincide. Free acts, in other words, are rational acts. It is in this sense, as Ritchie remarks, that Green accepts Hegel's dictum that the object of the State is freedom.

Freedom in its true sense does not mean the freedom of being left alone. When the satisfaction that man seeks is not his true satisfaction, it may be said that his will is not free. There is no moral free-

dom in such a case. Such a man is under bondage. True satisfaction may be described as the state of peace or blessedness. It is a state of mind in which the whole man has found his object. It is not the satisfaction of this or that particular desire. It is the realisation of the whole self of man. As Kant puts it, 'He is free because he is conscious of himself as the author of the law which he obeys'. Freedom means determination of the will by rational objects, objects which help to satisfy the demand of reason, the effort after self perfection.

Green does not accept without qualification Hegel's dictum that the State is the realisation of freedom or freedom objectified. He recognises the fact that institutions are not fetters on the individual but are embodiments of ethical ideas. At the same time, he holds that to regard any given State as a complete realisation of freedom is a mockery. A gulf separates the ideal from the actual and, therefore, there is at best only a tendency for the State to become the living embodiment of freedom. Green does not endorse the Hegelian dictum : 'The Actual is the Rational and the Rational is the Actual'. Nor does he give such an exalted place to established morality. Green admits that established morality has a very important part to play in the political development of the individual. But the final stage in that development is reached only when man seeks perfection for its own sake. Only then he really becomes free.

In more ways than one Green departs from the teachings of Hegel and approaches the standpoint of Kant. Witness, for example, his view on individual liberty, war and international morality, where he is more Kantian than Hegelian. Like Kant, Green believes that the only good thing is a good will. Freedom is not something negative. It is positive. On questions of resistance to the State, the value of representative government, the place of the monarch in the constitution, the rationale of punishment, etc., he differs from both the German writers. He is at the same time a Hegelian in that he emphasises the moral value of the majesty of the State. But this emphasis is not at the expense of the 'liberty of the subject.'

(2) *Green's Theory of the State.* The political philosophy of Green, says E. Barker, can be stated in the form of three related propositions: human consciousness postulates liberty ; liberty involves rights ; rights demand the State.

We have already dealt with Green's conception of freedom and there is no need to cover the same ground once again. It is sufficient to say that Green's doctrine of liberty is 'the Kantian doctrine of the

free moral will in virtue of which man always wills himself as an end (*3 : 32*).' Green is convinced that the best way in which the State can help its individual members in the life of self-realisation is by providing them with a system of impartial and universal rights. Rights, he holds, are the outer conditions necessary for man's inner development. The supreme right of every rational person is the right to become what a man should be, 'what he has it in him to be, in fulfilment of the law of his being (*29 : 17*).' Every other right is derived from it. Natural rights in the sense of pre-social rights are a meaningless conception. But natural rights in the sense of moral or ideal rights are full of meaning. 'They are necessary to the end which it is the vocation of human society to realise (*29 : 34*).' The basis of rights is not mere legal recognition. It is a common moral consciousness. Rights are relative to morality rather than to law. They are the conditions necessary to the fulfilment of man's moral end.

No one can have 'a right, except (*a*) as a member of society and (*b*) of a society in which some common good is recognised by the members of that society as their own ideal good, as that which should be for each of them (*29 : 44*).' This means that only among persons, in the ethical sense, can there come to be rights (*29 : 44*)'. Through the possession of rights the truly moral person makes a common good his own. Rights should be regulated by mutual recognition.

True to the idealistic tradition, Green regards the State as natural and necessary. It is an ethical institution essential to the moral development of man. Its primary purpose is to enforce rights, even by compulsion if necessary. The State is justified in using force because it expresses the general will of the people, and by general will Green means the common consciousness of a common end. "Will, not force, is the basis of the State".

According to Green, the State is neither absolute nor omnipotent. It is limited from within and without. From within (*a*) it is limited by the fact that law can deal only with external acts and intentions and not with motives. Therefore, the State cannot promote the good life directly. It can only remove obstacles to good life. (*b*) It is limited also by the fact that in exceptional circumstances the individual has the duty of resistance. (*c*) Green further recognises that the various permanent groups within society have their own inner system of right and that the right of the State over them is one of adjustment. As E. Barker observes: 'The State adjusts for each (group) its system of rights internally and it adjusts each system of

rights to the rest externally (*3 : 43*).' Because of its power of adjustment, the State, says Green, has ultimate authority. For not adopting the pluralistic position wholesale, MacIver criticises Green in these words : 'All through he is considering what the state can and therefore should do to secure the conditions within which man can act as a free moral being. But the poles of his thought are still the individual and the state. He does not consider how both are affected by the existence of other associations with other instrumentalities than political law. Had he done so he would have seen that the problem is not simply what the state *should* do but also what the state is permitted to do, surrounded as it is by other powers. limited as it is by definite organisations of other kinds, fulfilling functions of their own in ways of their own. Green remains on the verge of the modern problem of sovereignty (*55 : 41*).'

From without, Green holds, the State is limited by international law. Unlike Hegel and like Kant, Green believes in a universal brotherhood of men. The right of every man as man to free life involves the conception of a common humanity and of a common social organism.

(3) *War.* (*29*) Holdingthe above point of view, Green's attitude towards war is entirely different from that of Hegel and his German disciples. War, says Green, is never an absolute right. It is at best a relative right. It violates the right of man to free life. It may be justified as one wrong to correct another previous wrong, that is, as a 'cruel necessity.' But it is a wrong all the same. War is not murder in the moral sense. The soldier is not a murderer. If we say that the authors of the war are murderers, the difficulty is that we cannot locate these persons. Even if the blame can be assigned to some individuals, it cannot be so very definite as in the case of individual murderers. However selfish their motives, they cannot fairly be interpreted as ill-will towards the persons who happened to be killed in the war.

Nevertheless, war is a moral wrong. The argument that those who kill in war do not intend to kill anyone in particular, does not make the violation of the right any less serious. It is not like death due to a wild beast or to a natural force like lightning. The deaths in a battle are caused distinctly by human agency and intentional agency.

A second argument which is often used in defence of war is that in a war between civilised nations soldiers may incur the risk voluntarily and that, therefore, there is no violation of the right to free life. Green refutes this argument. His refutation is that it does not

rest with a man to retain or give up his right to life at his pleasure. (It is for the same reason that suicide is condemned everywhere). Whether the army is raised by voluntary enlistment or by conscription, the State compels the risk of a certain number of lives. War means destruction of human life inflicted on the sufferers intentionally by voluntary human agency.

A third argument sometimes used by those who defend war is that the right to physical life may be overridden by a right arising from the exigencies of moral life. In other words, it is sometimes said that, in certain circumstances, not to fight is worse than to fight. Green is not convinced by this argument. He holds that all the argument in question does is to shift the blame of war to those responsible for those exigencies. War remains a wrong just the same. The destruction of life in war is always wrong-doing, whoever be the wrong doer.

A fourth argument used by some people in defence of war is that war calls out certain virtues, such as heroism and self-sacrifice and that it is the only means of maintaining the social conditions of the moral development of man. As such, they argue that war is a necessary factor in human progress. While admitting the force of this argument, Green holds that destruction of life in war is always wrong-doing. Caesar's wars of conquests in Gaul and the English wars in India were certainly followed by beneficent changes. But these changes, Green believes, could have been brought about by other means just as well. War violates human rights. That ulterior human welfare could be brought about only by war is due to human wickedness. Green is willing to admit that desire to do good to mankind through war diminishes the guilt of any particular war. But it is a wrong all the same. As a matter of fact, he argues, the majority of people who take part in wars are not actuated by such laudable motives. Often their motives are selfish. General human selfishness is the cause of war.

Hence it follows that the State, so far as it is true to its principle, cannot have to infringe the rights of man as man by conflicts with other states. War is not an essential attribute of the State in its perfect condition. It may belong to the State in its imperfect actuality. But as the State becomes more perfect, there will be less and less need for war.

Therefore, we do not accept the further argument used by the supporters of war that conflict between States is inevitable. The gain of one State does not necessarily mean the loss of another. The more perfectly each State attains its proper object of giving free scope to

the capacities of all persons living on a certain range of territory, the easier it is for others to do so, and in proportion as they all do so the danger of conflict disappears. It is not because States exist, but because they do not fulfil their functions as State in maintaining and harmonising general rights, that such conflicts are necessary. The conclusion to which Green is driven is that no State as such is absolutely justified in doing a wrong to mankind, though a particular State may be conditionally justified. War cannot be condemned on the ground that it is a necessary incident of the existence of States. There is no ground for holding that a State is justified in doing whatever its interests seem to require irrespectively of its effects on other men. War at best is only a relative right.

The sixth and final argument used in defence of war is that Green's cosmopolitan view will destroy patriotism and national life and necessitate a universal empire. Green's reply to this argument is that public spirit, to be real, must be national, but the more a nation becomes a true State the more does it find outlets for its national spirit in ways other than conflicts with other nations. It is utterly foolish to speak as if the desire for one's own nation to show more military strength than others were the only or the right form of patriotism. So far as the perfect organisation of rights within each nation is attained, the occasions for conflicts between nations disappear.

Green admits that nationalism is a good thing. He believes that the love of mankind needs to be particularised in order to have any power over life and action. But there is no reason why this localised or nationalised philanthrophy should take the form of jealousy of other nations or desire to fight them, personally or by proxy. To the extent to which States become thoroughly formed, to that extent there is no need for patriotism to be diverted into military channels. The identification of patriotism with militarism is a survival of the times when States in the full sense did not exist. Patriotism and militarism are by no means identical. Standing armies are a proof that mankind is not yet thoroughly organised into political life. They are due not to the development of a system of States, but to circumstances which witness the shortcomings of that system.

We have dealt with Green's indictment of war fully, because it 'constitutes one of the finest and strongest parts of his lecture (*3 : 46*)' and illustrates his departure from Hegel, who could hold that 'the state of war shows the omnipotence of the state in its individuality.

(4) *State Action.* As said earlier, Green conceives state action in negative terms. Good life is for the most part self-earned. The State cannot promote it directly. All that it can and should do is to remove obstacles that lie before human capacity as it seeks to do 'things worth doing'. A good act is good only when it is done spontaneously, that is, from a disinterested motive. Acts done under compulsion lose their moral value. What the State must do, therefore, is only to enforce those acts the doing of which, *from whatever motive,* is necessary for the good life within society.

Applying the theory to the practical conditions of his day, Green considers ignorance, drink, and pauperism obstacles to the free expression of human capacity, and is, therefore, in favour of a considerable range of State action in the removal of these obstacles. He is not deterred in his thinking by any arguments based on natural rights or vested interests, or on the doctrine that the free will of man should be given complete scope to 'ride triumphant of itself over illiteracy, intemperance and indigence (*2 : 51*).' Green realises that free will is not something independent of, or superior to, the outer conditions of life and that, therefore, these conditions need to be adjusted before the free will can really exercise its freedom. This point needs stressing because idealism is sometimes criticised as being a high sounding justification of hide-bound conservatism. Safine writes: "What Green added to liberal theory was the conception of collective well-being a pre-condition of individual freedom and responsibility".

To revert to Green's example, compulsory education puts compulsion on the parents for the sake of the child and prohibition puts compulsion on each and all for the sake of each and all.

(5) *Punishment.* Green's treatment of this question is an intrinsic part of his theory of State action. The criminal's will, which is anti-social, constitutes a force opposed to freedom. Punishment in such a case is a force directed against that force. Punishment is not inflicted with any direct reference to the moral guilt of the offender in the past, or to his moral reformation in the future (*3 : 48*). To measure punishment according to the moral guilt of the crime is an impossible task. Neither the pain of the punishment nor the moral guilt of the crime could be gauged by the State. Even if the State could work out a proportion between the pain of punishment and the moral depravity of the crime, it would have to punish every case differently. That would mean an end to all general rules of punishment. Besides, proportioning punishment to moral guilt implies that the business of

the State is to punish wickedness as such. Green thinks that the State has no such business. If the State is to punish immorality (proper), it will check disinterested moral effort. The punishment of crime, therefore, 'neither is, nor can, nor should be adjusted to the degree of moral depravity properly so called, which is implied in the crime (*3 : 195*).'

Similarly, the primary object of punishment is not to bring about the moral reformation of the criminal. All true reform comes from within. Therefore, no amount of punishment can reform the criminal against his will. The best that the State can do is to regenerate his own will. 'Actually, punishment is adjusted to maintaining the *external* conditions necessary for the free action of will: it is not adjusted to the *inner* will itself (*3 : 49*).' Its ultimate aim is 'to secure freedom of action for the moral will of every member of the community (*3 : 49*).' This means that the punishment should be regulated by the importance of the right violated. Indirectly, punishment may induce the criminal to correct his own recalcitrant will. 'Even in this latter aspect punishment is still 'a removal of obstacles', for the obstacle which the criminal opposes is not only a force, but a will (*3 : 50*).'

The conclusion at which Green arrives is that the primary object of punishment is 'not to cause pain to the criminal for the sake of causing it, nor chiefly for the sake of preventing him from committing the crime again, but to associate terror which the contemplation of the crime in the minds of others who might be tempted to commit it (*3 : 192*).' This means that the future prevention of crime is the chief object of punishment. The means to that end is associating terror with the crime in the general imagination—as much terror as is necessary to prevent the crime.

(6) *Property.* On this question, as on many others, Green takes a liberal view for his day. He is neither a defender of private property in all its aspects nor an out-and-out critic of it. To use modern terminology, he is neither an individualist nor a socialist. He defends property in general on the ground that it is indispensable to the expression of man's personality. It is a corollary of the right to free life. Every man should have the opportunity to earn property, because every one has the capacity to partake of a common social good. But this capacity varies from man to man. Therefore, property should be unequal. Different men have different functions to fulfil in the life of the social whole, and inequality of property is a necessary condition of it. When, however, some people acquire or retain property in such a manner as seriously to interfere with the realisation of the wills

of others, the State should step in to redeem the situation. On this ground Green justifies the restriction of private property in land, and opposes family settlements. His ideal is 'a class of small proprietors tilling their own land'. The State is not to appropriate unearned increment. Green defends freedom of inheritance and freedom of trade.

(7) *Representative Government and Practical Politics.* Unlike Kant and Hegel, Green was a firm believer in representative government and an advocate of a wide franchise. He was an active liberal in politics and not a mere academician. 'He had always a lively sympathy for the middle class and non-conformity. He had, besides, a keen interest in education and licensing reform....In the civic politics of Oxford he took a share which has made his name a tradition and an example in the university. In national politics, he was a liberal of the school of John Bright, and from 1867 onwards he appeared on political platforms (*3 : 31*).'

(8) *Criticism and Appreciation.* Among those who have adopted the idealistic point of view Green seems to be the most sober. In the words of E. Barker, Green was both a soaring idealist and a sober realist. We differ from Green with regard to details, but the general principles which he laid down are sound even today. His justification of property in capital, his deprecation of any attempt on the part of the State to appropriate unearned increment, and his stress on the deterrent theory of punishment, may not commend themselves to us today. 'But what matters is rather his principles than his analysis of a particular set of conditions or his suggestions of a particular policy. If his principles are true, each age can progressively interpret their meaning to meet its own needs'. His firm hold on the worth of persons, his deep sense of the liberty of the individual, his conviction that individual good is an intrinsic part of social good, his refusal to raise the State to a mystical height, his recognition of a universal brotherhood and international law, his eagerness to place limits on the power of the State so that spontaneity in the performance of moral acts may not be deadened, his emphasis on rights, his view that property is a means for the expression of personality, and his admission that in extreme cases the individual has the duty of resistance—all these are as sound to-day as they were when Green's lectures were delivered (1879-80).

F. H. Bradley (1846-1924) is more Hegelian than Green ever was. In his chapter in *My Station and its Duties* in *Ethical Studies*, Bradley expounds his theory of the State. E. Barker regards this theory as a

combination of the platonic conception of justice with the Hegelian conception of *Sittlichkeit.* Without going into the details of Bradley's view of the State, we may say that the conception of a moral organism is the central feature of it. The sum of relations in which man stands constitutes his position or station in society. It is the duty of every man, says Bradley, to find that position in society and fulfil the functions attached to it. In so doing, he obeys the law of his being. 'In fact, what we call an individual man is what he is because of and by virtue of community, and communities are not mere names, but something real.' No man stands alone. He is born a member of a community and the community exerts its influence on him at every turn. The very atmosphere which he breathes is social through and through, 'so that the conduct of his being implies in its every fibre relation of the community. He is what he is by including in his essence the relations of the social state ; and if morality consists in the fulfilment of self, it consists in fulfilment of those relations (*3 : 63*).' All this means that for the individual morality consists in the fulfilment of his station and its duties.

The State is a 'system of wholes.' It includes all the communities which affect men. It is a moral organism, 'a systematic whole, informed by a common purpose or function (*3 : 63*).' On its outer side, it is a body of institutions. On its inner side, it is a soul or spirit which sustains that body. Each one of the parts of this organism has a spirit and consciousness of its own. In this respect, a moral organism like the State differs fundamentally from an animal organism. It has a life and continuity of its own. Individuals live in all their fulness only to the extent to which they cultivate their specific field. 'The breadth of my life is not measured by the multitude of my pursuits, nor the space I take up amongst other men ; but by the fulness of the whole life which I know as mine.'

Bradley realises that no given State is a perfect embodiment of the ideal which he sketches. At any given time the morality of the State may be on a lower plane than the public conscience of the people or ideal morality. Again individuals may desire to rise above the narrow limits of their station in the community and realize a cosmopolitan morality. All this may lead to the realisation of 'all humanity as a divine organic whole (*3 : 66*).'

The chief criticisms to which Bradley's theory is open, are :

(1) No careful distinction is made between the State and society. The State as described here is really society as well as the

State. 'It is the whole complex of influences arising from the fact of association (*3 : 66*).' Not to distinguish the State from society is to lead to unlimited State regulation of life.

(2) 'My station and its duties', is a phrase difficult of interpretation. It may be construed to mean that the individual should be satisfied with whatever lot has befallen him and should carry out the duties of that station without complaining even as the law of Dharma has meant in relation to caste. Such an interpretation would of course make idealism synonymous with hide-bound conservatism. 'If my station in life' is to mean anything at all, it should mean the position for which the individual's powers and faculties best fit him. But in the modern industrial State a large majority of people are directly or indirectly deprived of the opportunity of finding the station in life which will best suit their capabilities.

B. Bosanquet (1848-1923). Hobhouse characterises him as Hegel's 'most modern and most faithful exponent.' This is somewhat of an exaggeration. We are safe in saying, however, that Bosanquet begins with Rousseau and Green, and ends almost in Hegel.

The starting point of Bosanquet's theory is the conception of the free moral will of man expounded by Rousseau. True freedom, to all idealists, consists in willing rational, universal objects. The exposition of Bosanquet's doctrine falls into three stages : (1) distinction between the 'actual' will of the individual and his 'real' will ; (2) connection between the 'real' will ofthe individual and the 'general' will of society; (3) the State as the supreme expression of the general will.

(1) Using the terms 'actual' and 'real' in a technical sense, Bosanquet consistently uses the term 'actual' to describe man's impulsive, unreflective, or recalcitrant will, and the term 'real' to describe his rational or 'constant' will. According to his terminology, a man is said to exert his 'actual' will when he acts from moment to moment as a conscious individual ; and as this will is corrected and amended by what he wants at all other moments and is adjusted to the wills of others, it becomes 'real'.

(2) The 'real' will of the individual does not stand alone. It is bound up with the 'real' wills of other individuals in society and becomes the' general' will. This means that the

individual can make the best of himself only in society. In his 'repellent isolation' man is worth nothing. The terms 'general will' and 'the common life of society' are convertible terms. Man's full satisfaction cannot be attained apart from the satisfaction of the 'general will.

(3) The State is the perfect embodiment of the general will. The common life of society depends upon the law and political order provided by the State. Several of Bosanquet's critics are willing to admit the validity of the first two stages in his doctrine, but are not prepared to admit the validity of the third.

The notion of the common life of society is a central feature of Bosanquet's theory. Bosanquet holds that man's life is social through and through and that even his individual relations are influenced by the common social life. Society consists of a group of individuals united by some common general purpose or a dominant interest. All this means that the ideal of a common mind or a general will is not a mere fancy. It is a living reality. Take, for example, a school or an army or a game of cricket. Each one of them represents the working of a mind or minds. We cannot, *e.g.*. undertsand the mental activity of the child at school apart from the mental activity of the parent and of the teacher. Institutions are thus embodiments of ethical ideas. In Bosanquet's words : 'An institution implies a purpose or sentiment of more minds than one, and a more or less permanent embodiment of it.... In institutions we have that meeting point of the individual minds which is the social mind. Rather ... we have here the ideal substance, which, as a universal structure, is the social, but in its differentiated cases, is the individual mind (*5 : 277*).'

Bosanquet's theory of institutions is:

(1) every social institution or group is a complicated interworking of the minds of individuals ;

(2) the totality of the group is reflected in the mind of the individual ;

(3) every member tends to impose upon the other members a peculiar capacity or point of view.

The various ethical institutions in society are the family, the neighbourhood group, the nation State, and the like. Of these the State is the most supreme. It is *the* ethical ideal. It is a source of all-pervading adjustments. It is an operative criticism of all institutions. In its narrow sense, it is a political organisation using force.

It puts its seal of approval on all those social efforts which are beneficial in their nature.

In a broad sense, it stands for the general organisation and synthesis of life and is practically synonymous with society. This latter interpretation of the State as a working conception of life as a whole brings Bosanquet very close to Hegel.

Green and Bosanquet. A close study of these two writers reveals not only striking resemblances, but also striking differences.

Resemblances—

(1) Like Green, Bosanquet assumes the indispensability of the State for the realisation of man's higher life. But unlike him, he comes close to the Hegelian conception of the free absorption of the individual in the spirit of a nation. However high a place Green may be prepared to give to the State, he has no disposition to sacrifice the liberty of the subject to the majesty of the State. Such a statement, we are certain, cannot be made in relation to Bosanquet without serious qualifications.

(2) On the nature of the State and the proper sphere of State action, there is little to distinguish Bosanquet's theory from that of Green. Both writers believed that while the State is an ethical institution, it cannot, in the very nature of the case, promote morality directly. Art, morality, and religion fall outside its scope; and in the interest of the best life the State should leave them alone. The primary function of the State is to hinder hindrances to good life by providing a system of impartial rights. Thus, both Green and Bosanquet adopt what appears to be a negative view with regard to the limits of State action. The peculiar sphere of the State is the world of external action.

(3) Unlike the German idealists, and particularly Hegel, neither Green nor Bosanquet is a believer in absolute monarchy. True to the English tradition, they both believe in representative government as the best form. But Bosanquet's reverence for the State is so great that it may easily lead to state absolutism. It is true that he does not plead for the authority of any political organisation but only pleads for the State. In practice, however, this may mean giving unlimited authority to the government of the day.

Differences—

(1) On the question of resistance to the State, Bosanquet adopts a more conservative point of view than that adopted by Green. The State as representing the will of the community, has the sole right of

judging when the expressions of the individual conscience are dangerous to the welfare of the community. This does not mean that the individual has no 'right of rebellion'. He has that right, but it is granted to him not on the basis of his private conscience, but on that of the social conscience. When the individual rebels, the assumption is that he represents the social mind more adequately than do the State representatives. Bosanquet seems to admit that such assumption may be true, 'but his own interest is rather in emphasizing the fact that the individual is more liable to be mistaken and that the petty gain in practical value may be more than offset by the injury done to the stability of the social organisation itself (*81 : 68*).' His general conclusion is that the orderly processes of the State 'as sole organiser of rights and as guardian of moral values' are so important that the 'right of rebellion' may be regarded as almost negligible.

(2) In his theory of punishment, Bosanquet departs to some extent from Green. Both thinkers adopt the element of deterrence in punishment as the most essential. However, Bosanquet's view is somewhat more positive than that of Green. The argument he uses is of a psychological character. What happens to man is his sub-conscious region sooner or later affects his conscious self. This being so, punishment which belongs to the realm of automatic relations, may so affect the conscious will as to bring about lasting reforms in the character of the person punished. 'Thus punishment may mean, not that henceforth I cease to have slips because I fear to experience a like shock again, but that henceforth I cease to have slips because I have come to my senses ; have had my consciousness of the meaning of a whole system of habits awakened ; and have realised in the light of such consciousness, what my offending means (*3 : 76-77*).' Thus, punishment in being deterrent is at the same time reformatory.

(3) In his treatment of war and international morality, Bosanquet parts company with Green most decidedly. As seen already, Green condemns war as wrong because it violates the right of every rational being to free life. Bosanquet adopts a totally different point of view. He makes a distinction between the acts of the State as such and the personal acts of individual statesmen and insists that it is altogether inappropriate to apply to acts of the former category moral terms like murder and theft. The State, he further says, is 'the guardian of our whole moral world and not a factor in our organised moral world.' All this, he contends. does not mean a denial of the moral responsibility of the State. Yet, he writes, 'The State, as such, certainly cannot

be guilty of personal immorality, and it is hard to see how it can commit theft or murder in the sense in which these are moral offences (*5 : 300*).' Bosanquet does not contend that the interests of the State can justify every departure from current personal morality. It is a matter of relative importance. This principle, he says, is recognised throughout the whole of private life. 'Duties are relative to positions; I may not and must not do what you must and may (*5 : p. LIII*).'

The State has a will and personality of its own and, as such, it has a moral responsibility to its citizens. One of its chief responsibilities is to seek peace and ensure it. In the absence of effective international law, it is the duty of the State to defend its citizens by force, if necessary. 'As the individual must ultimately follow his conscience to the end, so the State, if it is to be morally responsible, must follow its own. It is the guardian of moral interests, and must be faithful to its duty (*5 : p. L*).' There is always a possibility of the claims of mere life coming into collision with the claims of a better life. In such cases, it is obvious that the well-ordered State should choose the latter in preference to the former. Everyone knows, says Bosanquet, that he must not speak all truths, nor endeavour to right all wrongs, nor carry out all promises. These are obvious limitations. 'Everyman, not to speak of every great organisation, involves others, and must take account of the consequences of his acts. And in acting for a huge organisation, whether political or other...limitations on veracity, justice, and good faith...become more and more imperative. All we can ask for our guide, and all we really need, is devotion to supreme values, common sense, and *bona fides* (*5 : p. LII footnote*).' 'What is necessary is to distinguish carefully the position and the true functions of all moral beings, but especially of powerful organisations, and to strive that no more harm may be done than is inevitable (*5 : p. LIV*).'

To the question of whether or not it is possible to remove these conflicts which arise out of the many-sidedness of life by recognising humanity as a unit, Bosanquet returns a negative. His answer is that at present there is no organisation of humanity, no connected communal consciousness. States are not united to one another in the way that individuals in a State are united together. The League of Nations, he contends, was just a means to make international law more effective. It was not a single community. There were no common aims and common life. Humanity is an aggregate rather than

an organism. Our primary loyalty is to a quality and not to a crowd ; it is to the best life of our own community. From a religious point of view one might say that both these loyalties should coincide but not in the practical secular life.

Criticism and Appreciation of Bosanquet's Theory :

(1) Hobhouse, who is a vehement critic of Bosanquet, criticises him for his doctrine of the will. He holds that the distinction between the 'actual' and 'real' will is altogether false and claims that the actual is the real and the real is the actual. This is hardly fair to Bosanquet, who uses these terms in a technical sense. Hobhouse quibbles with words when he says that his will for the time being is his real will. It is what Bosanquet would call 'actual'. Since our experience is continuous and most of us make steady progress all the time, it is a mistake to split up our acts, as Hobhouse does, as though they had no relation to each other. Bosanquet's interpretation of the will seems to be more satisfactory. He relates man's acts as a whole. The fact that a person's will undergoes modifications does not mean that it is a different will.

Hobhouse says that there is strictly no part of the individual which is more real than any other part. But we know from experience that one act is not exactly the same as another. We constantly differentiate between moods and acts. By 'actual' Hobhouse means that all the acts expressive of the will—good and bad—are there. No one denies that. The question is, do they all have the same quality or value ?

A little later in his book, *The Metaphysical Theory of the State,* Hobhouse qualifies his crude statements. The logic of his thinking forces him to adopt Bosanquet's distinction, although he prefers to use the terms 'permanent' and 'transitory' in the place of 'real' and 'actual'. Bosanquet would have no objection to accepting Hobhouse's phrases if it were not for the fact that a person's 'permanent' will may be narrow and selfish and thus fall far short of his 'real' will. The permanent will of a criminal, for instance, is not 'real' in Bosanquet's sense. Neither the selfish man nor the criminal can make the most of his life. In both these cases the 'real' and the 'actual' will tend to fall apart.

Calling to his aid the average man, John Jones, Hobhouse argues that if Jones is to give up his selfish will, his will must be transformed. Bosanquet would not use the word 'transformed', because the individual is rational even at the beginning. What Bosanquet calls 'real', Hobhouse calls 'good', 'rational' or 'harmonious', and adds that this will is not 'real' in the average man or is not complete even in the best

of us. Bosanquet would accept the latter alternative, inasmuch as the 'real' will is an ideal and no one is perfect. Nevertheless, to the extent to which the individual is not carried away by his impulses and corrects himself in the light of his experience, the 'real' will is present to a substantial extent. Bosanquet would have no objection to saying that the 'real' will is actually present in the average man to a considerable degree, although he would be the first to admit that good will in its fulness is not complete even in the best of us.

Hobhouse further says that Bosanquet beclouds the issue when he contrasts the 'real' with the 'transitory' or 'trivial' will. Hobhouse's own point of view is that every passion which is intense is 'real'. This is a mistaken view. The intensity of a separate passion and the depth of one's wider interests are entirely different things. But Hobhouse mixes them up. The intensity of a passion does not prove that it is more 'real' than anything else in Bosanquet's sense. Hobhouse contends that inharmonious and transitory desires are equally 'real'. What Bosanquet would say is that they are 'actual'.

Hobhouse goes on to say that the process of eliciting the real will is so roundabout that when one gets it one will not recognise it. Therefore, he asks why not admit that the real will is simply an ideal which we can never reach ? Bosanquet's answer to this question is that even the imperfect life of man can have 'real' will present in it. The average man's life is a mixture of the 'actual' and 'real' will, steadily progressing towards the 'real'.

Passing from the distinction between the 'actual' and the 'real' will to the conception of the general will, Hobhouse asks, what ground is there for assuming that the harmony between the individual and society will express the true will of the individual ? Suppose an individual desires to get the better of others. How are we to show him that this is not his 'real' will ? Hobhouse answers it by saying, 'Consistency be hanged ! I'll do what I please.' It is needless to say that this is not a proper answer. If the individual is determined to do what he pleases, he must also be prepared to take the consequences. Inconsistency in this case means practical conflict with others. Bosanquet considers not only man's reason, but also his emotion and will.

When Bosanquet uses the phrase 'the general will', he has in mind a general scheme running through a common nature or a common structure. Common nature does not mean that all are identical, General will stands for a common social nature determining the lives

of individuals. But it is not identically the same in every one of the people. Hobhouse says, 'In quality and character, these real wills are indistinguishable'. This is a pure mistake.

A little later Hobhouse attempts a definition of 'self'. In this definition he emphasises physical, bodily things. He forgets that the things that unite us with other people are not mere private, personal things. It is in things like religion and morality that the common self has its reality. Hobhouse is mistaken in placing man's individuality in his private feelings. Bosanquet, on the other hand, places it in the higher spheres. According to him, individuality expresses itself in the share it takes in the common life of society. Bosanquet can quite as well work with Hobhouse's phrase 'individual of a higher order' as with general will. The point to remember is that we cannot draw hard and fast lines between two individualities, although we can draw those lines on the bodily side.

(2) Bosanquet's conception of the social mind or social will, together with the related conception of a social organism, has also been questioned by critics. Here ,again, it seems to us that Bosanquet stands on a much more solid ground than do his critics. From the side of their bodily feelings men form an aggregate, but not so in the realm of mind and will. The separateness of minds is not so great as the separateness of bodies. Therefore, we cannot treat minds as separately as we can treat bodies. We cannot, for instance, all eat the same food but we can all think the same thought. The process of discussion is a process of thinking together. The outcome of a rightly conducted discussion is a single whole.

The 'spirit of the age' is not a ghost. It is not anything apart from the individual will. Yet it is not the production of the will of any one individual. It is a collective production. It is in the sense that we speak of the will of the family, the will of the trade union, and the will of the State. Just because there is no social brain, it is absurd to say that there is no social mind either. Our ideas affect one another. Therefore, the individual mind cannot be understood by itself. It can be understood only in relation to the social mind. The phrase 'social will' does not mean one big will above so many small wills. It means the interacting of different wills and the practical uniting of them through a general scheme. Thus two lawyers may plead one case. Although they are two distinct individuals, the case they present is a single one. Mental unity should not be tied down to bodily unity. Similarly, there is one will in the members of a team, if they work

into each other's hands. They reveal a single purpose or a general will.

Bosanquet is right in insisting that only in society the individual can make the most of his life. No one can develop his human nature in a well-rounded way apart from society. This, however, is not the same as saying that there is no conflict between the individual and society in practice, as Bosanquet is apt to hold. Ivor Brown, who criticises Bosanquet without properly understanding him, says, 'This conception of the State as a social organism, transcending all the individual organisms that compose it is...fundamentally undemocratic (*6 : 144*)'. Nevertheless, there is some justification for Brown's charge that, in his doctrine of the general will, Bosanquet 'puts into the hands of the governing class and of those who can worm their way into that charmed circle a weapon of infinite menace (*6 : 145*).' 'If the concept of the social organism is rigorously applied the result is state-slavery on an unparalleled scale (*6 : 148*).'

(3) As shown above, Bosanquet practically identifies the State with society and comes very near to a belief in the free absorption of the individual in the rational State. These are blemishes in his theory against which we cannot defend him.

(4) Neither can we defend Bosanquet's views on war and international morality. The State is responsible for the actions of its agents. It is quibbling with words to say that the actions of the State as such are different from the acts of its accredited representatives. Both the State and its agents are responsible to the moral judgment of the world. As Ernest Barker puts it, 'If a citizen can...treat his own State as legally responsible for damage, it is difficult to see why a State, which can undergo legal responsibility, should not also undergo moral responsibility if there is any body of moral opinion to affix responsibility (*3 : 78-9*).' Bosanquet is too full of enthusiasm for the State when he claims that the State 'has no determinate function in a larger community, but is itself the supreme community, the guardian of a whole moral world, but not a factor within an organised moral world (*5 : 302*).'

Criticism of Idealism and Defence

Many and varied are the criticisms which have been levelled against the idealistic interpretation of the State. While many of them contain elements of truth, we believe that idealism is capable of holding its own against them.

(1) Critics of idealism say that it is a purely abstract and metaphysical theory and that it does not deal with realities. The conceptions

which it presents are far removed from the actual conditions of life. Thus William James describes the idealistic theory as 'a rationalistic philosophy that indeed may call itself religious, but that keeps out of all definite touch with concrete facts and joys and sorrows.' It is a purely intellectual theory. It considers man as a rational being and leaves out of account the other aspects of human nature. The State is presented in terms of conscious reason and will, and such factors as habit and imitation, feelings and passions are entirely ignored.

It is true that idealism gives a high place to the power of ideas. But this does not mean that it is founded on mere illusion. To reject man's intelligence and rely on his feelings and immediate perceptions, as some modern writers do, is to drag man down to the level of the lower animals. We have no objection to tracing our social interests and feelings back to primitive instincts. But to stop short of that is to have 'a foundation which have no superstructure.' There is no doubt that the present-day psychological approach to the great social problems of man, has a great deal to commend it. But this does not mean that we are prepared to abandon reason and be entirely ruled by feelings and emotions. It is necessary to remember that the higher in the scale of evolution (reason) should interpret the lower and not *vice versa*. The psychologist, in denying the power of organised ideas, leads us to a 'curious form of agnosticism'. His position readily becomes pessimistic.

We admit that a considerable part of the teaching of the idealists is abstract and metaphysical. It gives a theoretical basis to practical facts. Political science being a normative science will be failing in its duty if it does not provide us with ideal types and standards. It is not a mere descriptive science. Apropos of this, Garner writes: Like ethics political theory is concerned with what ought to be as well as with what actually is; the real nature of a thing is what the thing is when its growth is fully developed; the political philosopher, therefore, may very properly idealise the state and deal with it in its imaginary splendour and perfection (*23 : 238*).' The so-called realist often fails to see beyond his own nose. While the critics of idealism concentrate attention upon the existing imperfect States, the idealist has the faith and vision to look forward to an ideal State. The ideal which he sketches is not a static ideal, but dynamic and is capable of adaptation to changing circumstances. 'Ideas have hands and feet.' They possess life and vitality.

What the realist does is largely to criticise the idealist. He does

not contribute much that is constructive. A simple description of how human beings behave as members of an organised society is not all that is required of the political philosopher. He should go beyond that to a delineation of how they should behave. Criticising the realists, Sir Henry Jones aptly remarks : 'They propound no theory of their own, but maintain a precarious existence by living on the defects of idealism, and by indicating—which is not difficult—the problem it has left unsolved (*42 : 13*)'.

When the idealist claims that the State is the product of reason and the rational will, he does not pretend that political life and political institutions have come into being as the result of careful reasoning. What he means is that, looking at the development through the ages, it is clear that man's reason has been in operation all the time even though in indirect and implicit manner. 'If it had not been present, the development would have ended not, as it has done, in a rational system of organised life which our reason can understand, but in a confused amalgam of taboos and instincts and habits which would have no meaning, no connection, and no reason (*3 : 83*)'.

The idealist admits that even to-day, in spite of the great advances that man has made in various directions, his actions are not often dictated by conscious reason. They are frequently the result of habit or unconscious imitation. Nevertheless, the idealist contends that they are capable of explanation by reason. What he wants is that habit and imitation should be brought to the aid of reason because they are the handmaids of reason, and not its masters.

(2) Even those who admit the importance of reason and will in a consideration of State life, feel at times that idealism mistakes ideals for actual facts. Instead of realising the ideal, it idealises the real. This tendency is particularly marked in Rousseau and Hegel. Hobson goes so far as to describe idealism as 'the tactics of conservatism.' The social reformer despairs of it, because it seems to preach 'the divine right of things as they are'.

This criticism is not without its justification. Aristotle idealises slavery ; Hegel glorifies war ; and Green is able to reconcile private ownership of capital with his liberal tendencies. Our only defence is that there is no necessary connection between idealism and conservatism. It is quite possible to argue for a radical social programme on the basis of idealism as it is to argue for conservatism. The phrase 'removal of obstacles to good life' is so broad as to include extensive State action, depending of course upon external circum-

stances and the predilections of the persons employing the idealistic theory.

(3) In close connection with the above criticism, it is sometimes said that the idealistic theory is too negative in character, especially in the sphere of State action. The idealists hold that the State can deal only with external acts since it uses compulsion. It cannot deal with motives. There is no way by which the State can directly promote moral excellence or perfection. Writing on this side of the question, Bosanquet says : 'the use of spiritual influences in a spiritual form is only open *per accidens* (accidentally) to State agency, while the promotion of spiritual ends by external means, and, pre-eminently by external means in which compulsion is operative, is only possible through delicate and indirect methods (*5 : p.XXXII*).'

In defence of idealism, it may be said that, while the theory of State action is stated in negative terms, results are positive. The chief reason for insisting on the negative character of State action is to safeguard the spontaneity or disinterestedness with which moral acts ought to be performed. For the State directly to undertake positive measures in the interest of man's good life is certain to lead to a pauper mentality or the undue dependence of the individual upon the State. It will defeat its own end. Individualism glorifies the individual and treats him as the end to which society is only a means. Socialism and Hegelianism go to the other extreme and claim for the State 'the glamour which belongs to the highest self-expression by which man transcends his isolation (*5 : p. XXXIII*).' English idealism, on the contrary, takes the middle course, although we cannot help feeling that both Green and Bosanquet exaggerate the purely negative aspect of State action. The individual and society at a lower level of existence are a means to the individual and society at a higher level.

(4) The idealistic theory, remarks Bosanquet, is claimed to be too narrow and rigid. Critics say that this theory may have been applicable to the simple conditions of ancient Greek city-states where no distinction was made between the State and society. But under the changed conditions of to-day, it is said that the State should be carefully distinguished from society and that a more adequate place should be given to the permanent associations within society than has been given by the traditional monistic theory.

We admit that many of the idealists fail to separate the State from society and that this failure leads to the sacrifice of the individual

to society. At the same time, we are not prepared to admit the pluralistic point of view which seeks to reduce the State to a place of absolute equality with other associations in society. In spite of the changed conditions of today, the State, in the words of Bosanquet, is 'a source of pervading adjustments and an idea-force holding together a hierarchy of groups and not itself a separable thing like the monarch, or the 'government', or the local body with which we are tempted to identify it (*5 : pp. XXVIII and XXIX*).'

Another sense in which idealism is said to be too narrow is in its alleged emphasis on the moral and spiritual goods of life to the exclusion of the material. The end of the State is assuredly good life or the excellence of souls. But this does not mean that the idealist advocates the direct promotion of good life by State action. Nor does it mean that he is altogether oblivious to the material needs of man. A perusal of Green's theory, for instance, is sufficient to show how close this writer keeps to the concrete facts of social life.

The ground on which idealism is said to be too rigid is in connection with the difficulty of locating the general will. Pluralists either deny the conception of the general will altogether or claim that each permanent association within society has a general will and personality of its own. The idealist does not refuse to admit that groups or associations other than the State can have a will and personality of their own. All that he wants is that the State should be given a unique place in society on account of the special tasks which it is called upon to perform.

(5) In the light of what has been said, it is not necessary to take too seriously the criticisms of such unsympathetic writers as Joad and MacIver.

Joad denounces idealism as unsound in theory, untrue to fact, and liable to extend a dangerous sanction to the more unscrupulous actions of existing States in the sphere of foreign policy.

(*a*) Both Joad and MacIver claim that the idealists identify the State with society and that this is a serious flaw in their theory. This criticism is no doubt applicable to the German idealists and such British idealists as Bradley and Bosanquet; but is not applicable to such sober idealists as Green. MacIver argues that the community may be regarded as possessing 'an enduring mind (*55 : 451*)', but not the State. We fail to see the validity of this argument.

(*b*) We agree with Joad when he argues that to say that man can-

not develop himself fully apart from the State is not to accept the omnipotence of the State.) But the assumption that he makes that the idealists as a whole believe in the omnipotence of the State is a profound mistake. We have already seen how narrowly Green and Bosanquet limit the sphere of State action. Joad draws a false contrast between the individual and the State when he writes : 'The State exists for individuals, individuals do not exist for the State (*41 : 18*).' The relation of end and means is not applicable to the relation between the individual and the State. None of the idealists, with the exception of Hegel, regards the welfare of the State as something apart from and superior to the welfare of the individuals. Yet Joad paints all the idealists with the same brush.

(*c*) Both Joad and MacIver consider the distinction between the 'real' and 'actual' will as unsound in theory and unreal in practice. We have already defended idealism against this criticism. Joad defines 'real' will 'as a will to carry out every decision of the majority of an association to which I belong (*41 : 19*).' This is a mere caricature. It is equally an exaggeration to say that whenever a conflict occurs between an individual and the State, 'it (idealism) takes the view that the latter must inevitably be right (*41 : 19*).'

(*d*) MacIver, in particular, attacks the idealistic doctrine of the personality of the State. His argument is that a State consists of persons, but that does not make the State a person any more than a grove of trees is itself a tree or a colony of animals an animal. This striking analogy is guilty of carrying over into our mental relations what is true of our physical relations. In the physical world, we are distinct individualities. But in the mental and moral world there is the contact of personality with personality, and it is possible to evolve a group mind and a group morality. To use a homely analogy, by hanging a dozen coats on a single peg, we do not make a single coat. But in the meeting of a committee of people who have not previously made up their minds there is evolved a single general will or a common mind.

All this does not mean that the State is 'the greater mind, the

> supra-person, whose will or purpose comprehends and transcends that of the individual minds or persons, who compose it (*55 : 449-50*).' It only means that the State has a will and unity of its own, which are not embodied in any single person at any one time. The State is a living person.

Many of the criticisms of MacIver and other opponents of idealism apply to individual governments, but do not apply to the State as such. The mistake made by some idealists is in identifying the actual government of the day with their ideal State.

Appreciation of Idealism

While not apologising for extreme forms of idealism, as found in Hegel, we believe that the sober idealism of the type presented by Green has much to commend it.

(1) It maintains a close connection between ethics and politics, and rightly holds that no political progress is possible apart from the application of the highest moral principles to our individual and social lives. Separation of politics from ethics is disastrous to both.

(2) It insists on the organic unity of society and shows clearly how society is held together by the State. Individual development is impossible in isolation. The true good of the individual is to find his proper place in the common life of society.

(3) It holds that the highest form of good is a self-earned good. Any form of State action which is a hindrance to the spontaneous performance of morality stands self-condemned. Individual initiative, enterprise, and originality should have free scope for their manifestation in every well-ordered society.

(4) Idealists are justified in placing before us a goal towards which political progress may be directed. To the extent to which this ideal is a mere Utopia or the product of one's fancy, it is futile. But to the extent to which it is based upon what we know of human nature and the practical conditions of social life, it is valuable. The ideal presented by the idealists is capable of realisation. It is not an idle dream.

(5) Idealism is right in insisting that the highest attributes of man are the attributes of mind and will. It has no objection to tracing the humble beginnings of man's reason back to primitive instincts and impulses, But what it fervently holds is that the higher in the scale of evolution—reason—should interpret the lower and net vice versa.

(6) It is a welcome reaction against what may be called without

disrespect, 'the pig through philosophy of utilitarianism.' The highest values that we know are moral, cultural, and spiritual. Material goods should be their handmaid, not their master.

Summing up the case for idealism, Garner writes: 'It may be said of much of the criticism which has been directed against the idealistic theory that it is unfair, exaggerated and based upon a misconception of the theory itself. In so far as the idealists exalted the State above all other human associations, regarded it as indispensable to the realisation of the good life, and held that, as such, it is entitled to the loyalty of the citizen and may demand sacrifices of him to preserve its existence, that it is the sole source of law and of rights, and that in it alone, is the individual capable of realising fully the ends of his existence, and that without it human progress and civilisation would be impossible, the theory is entirely sound and irreproachable (*23 : 238*).'

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14

DEMOCRACY

1. Democracy Under Revision

It is a common-place observation that the world today is not as hopeful of democracy as it was in previous generations. Its attitude is one of caution, if not of criticism. The Great War, in the words of Woodrow Wilson, was fought to make the world 'safe for democracy.' But the problem which has confronted us since then is how to make democracy safe for the world. The years succeeding World War II have shown clearly that democracy is not an open 'sesame' to peace, prosperity, and progress. In the multitude of voices, we do not necessarily find wisdom. We no longer hope with Bentham that we can radically improve 'this wicked world by covering it over with Republics'. We are more sober now, if not altogether disillusioned. Ludovici expresses the profound discontent of the present generation with democracy when he asks the rhetorical question : 'Who believes in democracy now-a-days ? Who believes in Parliamentary government, in the brotherhood of men, or in universal suffrage' ? He would readily agree with Alcidiades in regarding democracy as 'acknowledged madness.'

Democracy is being attacked today from various angles, both by reactionaries and revolutionaries. It is attacked with much vehemence by believers in autocracy and dictatorship. Many of these advocate the gospel of direct action, according to which a well-organised, strong-willed, and assertive minority should impose its will upon the helpless majority by remorseless terrorism, if necessary. The philosophy of direct action as expressed by Oliver Cromwell in a different context is, 'What's for their good, not what pleases them—that's the question'. The principal arguments used by believers in direct action, as stated by Hearnshaw, are :

(1) Parliament does not adequately represent labour.

(2) Political methods are not suited to the settlement of industrial questions.

(3) Direct action is more prompt and effective than political action.

(4) Minorities are usually right and the majorities are wrong.

Therefore, majorities should be disregarded and coerced for their own good. Direct action, in one of its phases, means the unreserved use of industrial power. 'It is a clear assertion of the antagonistic principle of oligarchy and ultimately of despotism'.

H. G. Wells is convinced that there has been a growing distrust and discontent with the politicians and the political method evolved by parliamentary democracy. The magic, he says, has gone out of the method of government by general election and 'democracy is entering upon a phase of revision in which parliaments and parliamentary bodies and political life as we know it today are destined to disappear'. The root of the trouble Wells finds in the indifference, ignorance, and incapacity of the common man towards public affairs. The ordinary voter, he believes, does not 'care a rap' for his vote.

In the face of all these criticisms, it is foolish to assume naively that democracy has an assured future before it, and that it will prove to be the panacea for all our social and political ills. It may be safely said that unless we can remedy the defects of democracy, which are coming more and more to the forefront, democracy will have to give place to some other form of political organisation.

2. The Meaning of Democracy

Democracy is not a mere form of government. It is a type of State as well as an order of society. Even friends of democracy have at times interpreted democracy to mean only a form of government. Thus J. R. Lowell says that democracy is only 'an experiment' in government. Lincoln defines it as 'government of the people, by the people, and for the people'. Seeley describes it as 'a government in which every one has a share'. Dicey defines it as a form of government in which, 'the governing body is a comparatively large fraction of the entire nation'. Even Lord Bryce, in his monumental work *Modern Democracies*, treats it as only a form of government. In the face of all this, well may we exclaim : 'God take care of our friends, we shall take care of our enemies'.

Democracy is not a mere form of government ; it is not primarily a form of government. A democratic government implies a democratic State, but a democratic State does not necessarily mean a

democratic government. A democratic State is consistent with any type of government—democratic, autocratic or monarchic. It may place supreme authority in the hands of a dictator, as the United States virtually does in times of crisis in reference to its president. As Hearnshaw remarks, all that a democratic State means is that the community as a whole possesses sovereign authority and maintains ultimate control over affairs. 'Democracy as a form of State is merely a mode of appointing, controlling, and dismissing a government'.

In addition to being a form of government and a type of State, democracy is an order of society. A democratic society is one in which the spirit of equality and fraternity prevails. Such a society does not necessarily imply a democratic State or a democratic government. The Mohammedan society is on the whole democratic, although it does not generally possess a democratic State or a democratic government.

The meaning of democracy is not exhausted even after interpreting it as a form of government, a type of State, and an order of society. It invades the realm of industry too. There are many today who claim that the battle for democracy will not be complete till industry is entirely democratised. They argue that, while democracy has made great strides in the social and political fields, it has made very little advance in the economic or industrial field. Some of these look forward to socialism as the next step in democracy. Whether their claim is right or not, we must admit that no society can call itself entirely democratic if it uses democratic methods in some fields and autocratic methods in others.

Direct and representative forms of democracy. Democracy in its narrow sense means rule by the Many.* For its origin it goes back to the old Greek city States, all of which enjoyed complete local autonomy. They experimented with different forms of government—monarchy, tyranny, aristocracy, oligarchy, and democracy. There was considerable speculation as to which one of them was the best. After weighing the arguments for and against the various forms, Aristotle gave his verdict in favour of polity or a moderate form of democracy. The type of democracy which prevailed in the Greek

* Thus Bryce uses democracy to denote 'a government in which the will of the majority of qualified citizens to constitute the great bulk of the inhabitants, say, roughly, at least three-fourths, so that the physical force of the citizens coincides (broadly speaking) with their voting power'. *Modern Democracies,* Vol. I, p. 26.

city-states was pure or direct democracy. All the freemen met together in general assemblies, passed laws and executed them, received ambassadors, and acted as jurymen. This type of democracy was revived in mediaeval times by Italian city States. The Forest Cantons of Switzerland also had direct democracy which has come down to modern times. Rousseau in the eighteenth century was a powerful advocate of this type of government. He deprecated indirect or representative democracy. But, even he saw the difficulty of realising direct democracy on a large scale under modern conditions. Thus he says that pure democracy presupposes many things difficult to combine. It presupposes:

(1) a small State, in which people may be easily assembled, and in which every citizen can easily know all the rest;
(2) great simplicity of manners;
(3) considerable equality in rank and fortune; and
(4) little or no luxury.

Present-day experience shows that democracy of the pure and direct type is an absolutely unattainable ideal. The only type which is possible for us today is the indirect or representative type. According to it the actual administration of affairs is taken from the hands of the people and is vested in delegates. The nearest approach that we find to direct democracy in some modern States is in the form of the referendum, initiative, and recall. These devices are by no means capable of universal application. Some of the other devices which are much more common are the widening of the electorate, responsibility of government to the majority party, frequent elections, and local self-government. Democracy and Parliamentary government are not necessarily identical, although for England and other countries which have adopted the English political model, democracy is indissolubly connected with Parliament.

Forms of Government. The time-old classification of government into monarchy, aristocracy, and democracy does not have much value for us to-day. Most governments at present are of a mixed type. They include the monarchic, aristocratic, and democratic elements in various degrees. The English constitution may appear to be monarchic on surface. But it is fundamentally democratic, with a strong tinge of aristocracy. What experience shows is that a sound democracy should make room for, and include, a sound aristocracy—not an aristocracy of birth or wealth, but an aristocracy of intellect, ability and character. Bryce remarks that all governments are in

fact aristocracies, in the sense that they are carried on by a relatively small number of persons.

There are different types of democratic governments to-day. Bryce says :

(1) they can exist under republic or a nominal monarchy ;

(2) they can exist under a rigid or flexible constitution.

But they are all based on the doctrine of popular sovereignty. As a consequence of this feature, the right of raising revenue and appropriating it to the several services of the State belongs in all these systems to the representatives of the people. They are all worked by political parties.

Democracy in its broader sense. In its broader sense democracy is 'a political status', 'an ethical concept', and 'a social condition'. It means faith in the common man. Or, as A. D. Lindsay states it, it implies that all beings have a worth in themselves. No one is a mere means to another's end. The well-known formula of Kant in this connection is, 'So act as to treat humanity, whether in your person or in that of any other. in every case as an end, and never merely as a means'. In the words of a seventeenth century English writer, not so well-known, 'The poorest he that is in England hath a life to live as the richest he (*53*).'

The value of personality which is the crux of democracy does not mean that all individuals are alike or equal. What democracy seeks to do is to reconcile the principle or sentiment of equality with the fact of natural inequality. It attempts to bring into existence 'a social machinery which would make for the enrichment and expression of personality'. 'Democracy in practice', says C. D. Burns, 'is the hypothesis, that all men are equal which is used in order to discover who are the best.'

Viewed in this manner Prof. Smith says that democracy is a religious principle and that the democratic way of life is the genuinely religious way of life. Democracy, we believe, is a practical manifestation of the enthusiasm for humanity. It is a concrete attempt at the reconciliation of the apparently contradictory principles of liberty, equality and fraternity, in order that every individual in the community may be enabled to attain the highest good possible for him. We do not agree with Sir Fitzjames Stephen when he says : 'No room is left for any rational enthusiasm for the order of ideas hinted at by the phrase, "Liberty, Equality and Fraternity"; for. . .there are a vast number of matters in respect of which man ought not to be

free, they are fundamentally unequal, and they are not brothers at all, or only under qualifications which make the assertion of their fraternity unimportant'.

3. The Classical Case for Democracy

Shutting our eyes for the time being to the defects of democracy in its actual working, let us see what reasons can be advanced in favour of the democratic principle. These reasons are:

1. The precautionary reason.
2. The psychological reason.
3. The educational reason.
4. The moral reason.
5. The practical reason.

The first three are fully dealt with by Prof. W. E. Hocking as follows:

1. *The Precautionary Reason.* Democracy gives us a guarantee that the will of every one in the community shall be duly considered, and that no one shall be neglected in what is done by the government. This does not mean that democracy promises to carry out the wishes of everybody, for that is clearly impossible in any society. What it means is that 'the poorest he' shall have as much freedom to express his mind as 'the richest he'. If efficiency were the only test of good government, a bureaucracy or even a dictatorship might be a better form than democracy. But efficiency is not the only test. The best government is that which makes the best possible citizens. Autocracy or bureaucracy will function very satisfactorily if we can select our rulers well. But the trouble with these forms is that they are not particularly interested in any section of the community. In an autocracy or a bureaucracy, individuals and groups of individuals may suffer here and there without affecting the rest of the community. In a democracy, on the contrary, at least in theory, there is not a single man who can suffer without the rest of the community sharing in his suffering. An autocracy or a bureaucracy, in other words, is partially paralysed. A democracy, on the other hand, is considered to be equally sensitive to the wishes and sufferings of all its members. In an autocracy or a bureaucracy there are many out-going connections from the government to the individuals in the form of orders and regulations, but there are not an equal number of incoming connections from the individuals to the government in the form of

wishes and desires. Democracy, says Prof. Hocking, ties a nerve to every individual. It makes a connection between him and the centre. In it there are as many incoming connections as there are out-going connections. 'In a complete democracy no one can complain that he has not a chance to be heard'. (A. L. Lowell)

2. *The Psychological Reason.* Efficiency, as said above, is not enough. Soulless efficiency killed Rome. In every form of government, we shall always try for government by specialists. But specialists do not know the whole mind of the people. Specialisation warps the intellect. The specialist knows his side of the case exceedingly well. But he does not always know how his prescriptions affect the people at large. It is the wearer who knows where the shoe pinches. What good government requires is a co-operation or working alliance between the specialist and the layman, and democracy best fulfils this condition. Prof. Hocking goes so far as to say that to be governed by the highly educated man alone is a calamity. Such a ruler is apt to be abstract and doctrinaire, far removed from the concrete situations of life.

If we turn our attention for a moment to different professions, we find that the specialist in these fields is more and more taking the lay public into his confidence. The physician who has generally been an autocrat hitherto is now trying to make the patient cure himself by making him a partner in the process of healing. Similarly, the expert in music seeks to impart knowledge regarding the rules of music and at the same time takes into account the judgment of the people as to what is good music without pronouncing *ex cathedra* what music people should appreciate. Likewise, democracy invites the man in the street to co-operate with the government in devising common solutions for common problems. The first thing that democracy does is to explain why, and the moment it does that it establishes a sympathetic connection between the government and the people. The individual, instead of being a mere passive recipient, becomes an active participator. 'Democracy', says Prof. Hocking, 'is the union of the conscious and the subconscious mind.'

3. *The Educational Reason.* Democracy is a large-scale experiment in public education. It stimulates interest and is informative. It tends to create a higher type of mentality among the people whom it governs. When a general election takes place every reasonable opinion is given a chance to express itself. Issues are discussed in all their bearings, and what was private soon becomes public. Speeches

are delivered, articles are written, programmes are outlined, and policies are propounded. The result of all this is a phenomenal rise in the popular understanding of the problems of government. In the course of a few days, perhaps weeks, the public becomes well-versed in the political problems of the day. Choices are made after much discussion, deliberation, and judgment. The views of every one become clarified and improved. If at the beginning of this process of joint thought and discussion there are as many views as there are individuals expressing them, at the end of the process we arrive at a common mind or general will. The mind of each individual is enlarged and enlightened. The slow effect of the democratic government is to raise the mental level of the people who take part in it. C. D. Burns writes: 'All government is a method of education, but the best education is self-education; therefore the best government is self-government which is democracy.'

4. *The Moral Reason.* Democracy ennobles the people. It rests on the principle that what a man earns for himself by his own effort is of much greater value to him than what is handed down to him by some one else. It is the best aid to self-help, initiative, and the cultivation of individual responsibility. The supreme merit of democracy, says J. S. Mill, lies in the fact that 'it promotes a better and higher form of national character than any other polity whatever.' Thus we find that in the United States democracy has meant an enlargement of human sympathy. The growth of democracy there has resulted in the growth of philanthropy and in the provision of opportunities for public education supported by taxation. President Lowell rightly remarks that the supreme test of excellence in a government is not order, economic prosperity, or even justice. 'It is the character a polity tends to create in the citizens by whom it must be sustained. The best government in the long run is one that nurtures a people strong in moral fibre, in integrity, industry, self-reliance, and courage.' It is needless to say that democracy at its best answers to this description. Bryce likewise says that the dignity of individuals is enhanced by political enfranchisement. Democracy, we may add, is conducive to the development of all-round man. Under no other form of government is self-realisation as easily possible as under democracy.

5. *The Practical Reason.* From the practical side, democracy has several advantages.

(1) It promotes patriotism. The man who has no vote is apt to

become disgruntled, or atleast indifferent, to political questions. It is the realisation of the fact that the government of the day can be promptly changed if it is not sensitive to public opinion which makes the average man take a genuine interest in the affairs of his country. The French people, says Laveleye, never really loved France until after the Revolution when they were admitted to a share in the government. Since then, they have become passionate lovers of their country.

(2) A corrollary of the fact that democracy promotes patriotism is that it reduces the danger of revolution. Democracy is government by persuasion. Every other form of government rests to a greater or less extent on force. Democracy believes in discussion and deliberation, and this is the only method which is bound to succeed finally. As Hearnshaw says, 'However long it may take to convert and educate the masses, only by means of their conversion and education can any cause be made finally to succeed.' It is to the eternal glory of popular government that it bases itself on freedom of speech, freedom of assembly, and concerted action.

In addition, democracy is the only form of government where both order and progress can easily go together. This fact constitutes another check on the possibility of revolution. Dictatorship gives us order, but not much progress, and what little progress there may be is determined by one person or by a small minority and may have no popular support behind it.

A further way in which democracy acts as a check on revolution is by emphasising the principle of equality. It knows of no sharp social cleavages and provides, on the whole, an open road to talent. Social inequality and social discontent which often prevail in other forms of government are bound to take a revolutionary turn when an opportune moment present itself.

(3) Some writers claim that democracy makes for greater efficiency than any other form of government. They argue that 'popular election, popular control, and popular responsibility are more likely to insure a greater degree of efficiency than any other system of government (*23 : 390*).'

(4) The doctrine of the general will, if it is to have any practical meaning at all, should express itself in the form of democratic organisation. We do not deny that in exceptional cases general will may be best expressed by the vote of one person or by the votes of a few persons. But as a general rule, it requires a democratic organisation.

4. The Case Against Democracy

Whatever the merits of democracy may be in theory, there is no doubt that it has been accompanied by many evils in daily practice. In its actual working, democracy has not fulfilled all the high hopes entertained of it by its early apostles. Without attempting at this point to evaluate the many criticisms that have been levelled against it both by friends and foes, we shall simply enumerate them for what they are worth.

1. The attacks on democracy in its early stages took an aristocratic turn. There were many who felt that democracy meant rule by the irresponsible multitude. Aristotle regarded it as a degenerate or perverted form of constitutional government. Mill feared the tyranny of the majority. Lecky thought that democracy was opposed to liberty. Even today there are those who claim that democracy attaches undue importance to quantity rather than to quality. Votes are counted and not weighed. Special training, conscientious judgment, and expert knowledge receive little consideration. Democracy rests on the assumption that every man is the equal of every one else. The practical consequence of this assumption is that government falls into the hands of the ignorant, the untrained, and the unfit. Democracy glorifies numbers. It counts heads without taking into account their content. It is a government by crowds. It makes the majority supreme, even if it be a very narrow majority. The minority which may have greater knowledge and better judgment is spurned. In a democracy it is difficult to secure enforceable responsibility. Popular election, short tenures, and rotation in office, are not conducive to responsibility.

2. There are others who adopt a somewhat different line of argument from the one sketched above. They argue that democracy in practice leads to oligarchy of the worst kind. Talleyrand describes it as 'an aristocracy of blackguards.' Power in a democracy falls into the hands of the demagogue, the grafter, and the 'boss'. Leaders

of firstrate ability are not chosen. People are jealous of superiority. Therefore, they choose popular men rather than able men to lead them. History abounds in instances of people rejecting such outstanding men as Woodrow Wilson and Venezelos in preference to second and third rate men who were extraordinarily skillful in adjusting themselves to popularity. From this it would appear that the only qualifications required of a leader in a democracy are that he should be a good psychologist, a compromiser, and one who is willing to demean his own principles when necessary. The 'strong, silent man' is often left in the cold, and the consequence is that men of ability and distinction do not offer themselves as candidates.

The average voter, it is said, is not much interested in matters of State. On many subjects that are discussed, there is no general will or common mind. The apathy of the voter in many democratic countries is proverbial. When an election takes place he has to be dragged from his office or other place of business to make him record his vote. It is estimated that in the United States, on an average, less than half the population qualified to vote exercises the privilege. In one state in the United States, only six percent of the voters went to the polls at a certain election. The inevitable consequence of such indifference is that power easily passes into the hands of a few unscrupulous individuals who are ever-ready to exploit the people by their high-sounding promises and specious arguments.

3. In close connection with this argument it is often said that democracy means in practice the evils of party politics. While the party system is indispensable to a democracy, it,

(1) encourages hollowness and insincerity ;
(2) carries the national divisions into local elections ;
(3) leads to the 'Spoils' system ; and
(4) debases moral standards (*7 : Vol. I, Ch. XI*).

The party machine is so well-worked that the individual citizen who wants to exercise his judgment is given little or no freedom. He has to choose between two or more candidates who may be either knaves or fools and for none of whom he cares, and decide between two or three issues, none of which meets with his approval. In the words of A. R. Lord : 'To the critics of representation the party system seems to be too mechanical a method of dividing opinion to represent the popular will with any approach to exactness (*54 : 162*).'

4. The French writer, Faguet, describes democracy as the cult of incompetence. This is the judgment of some others, too, who are not

particularly prejudiced against democracy. It is freely said by some that democracy means an irresponsible government and that it fails to lay down sound lines of policy. It is specially weak in the quality of its ministers, in national defence, in foreign relations, and in questions of diplomacy. It is a government by amateurs or those who are hopelessly immature. It rests upon a broken reed inasmuch as it rests upon the common multitude which is ungrateful, emotional and passionate. The common people do not reason much. Today they laud a man to the skies and tomorrow they cast him down in the mire. They are inconstant and fickle in their attachment both to principles and to persons. They are not swayed by any consistent and unifying ideals. At times they are given to idealism and hero-worship; they are easily swept off their feet by such shibboleths as 'self-determination of nations' and by such catchwords as 'Hang the Kaiser'. At other times they become obscurantists and obstruct all progress. They are short-sighted. In some democratic countries, the critics notice a tendency among the people to excessive interference in detail by means, of mandates petitions, and protests. In others they find a tendency to insubordination and anarchy. Leaders are flouted. In the words of Hearnshaw, they are like school masters elected by their pupils and liable to be punished and dismissed by them. *

5. It is claimed that democracy is a government by the people. The critic asks whether this is really so in practice. Who are these people in whom wisdom, justice and power are supposed to be embodied ? Does it mean a majority of electors ? If it does, what are we to say to those who claim that the majority of voters do not necessarily represent the majority of the people ? With the coming of the three party system in England and the development of the group system in some other countries, those who actually rule represent frequently the minority of the community and not the majority. Even if it be granted for the sake of argument that a majority vote often represents majority opinion in the country, we have to face the further query whether the majority is necessarily right ? The voice of the people may very well be the voice of the devil. To assume that representatives always 'represent' the will of the people is a mistake. They may consciously or unconsciously misrepresent it. They are not always free men. They are subject to strict party discipline

* For a detailed criticism of Democracy see Hearnshaw: '*Democracy at the Crossways*'.

and are at times more afraid of newspapers and of vested interests than of their electors.

6. One of the forcible arguments used by Faguet against democracy is that it is a biological misfit or a biological monstrosity. What Faguet means by this criticism is that democracy is not in line with the process of evolution. He argues that the higher we ascend in the scale of evolution the greater is the degree of centralisation; different parts of the body are assigned different functions. Democracy, says this writer, is anti-evolutionary because it does not have a central nervous system. Instead of setting aside one part of the organism to act as the brain to do the thinking and planning for the whole organism, it expects the brain to be located anywhere and everywhere in the organism. Casting off figurative language, what Faguet means is that government should be in the hands of an intelligent oligarchy and that the many should implicitly obey it. He interprets the democratic form of government to mean extreme decentralisation and thorough incompetency.

7. A serious charge laid at the door of democracy is that it is a very expensive form of government. Democracy means organisation of opinion, propaganda, and frequent elections. All this involves a great deal of expenditure. For instance, millions of dollars are spent every four years in the United States over presidential elections. In recent years half a million dollars was spent on the election of a single senator. Money which should be used for productive purposes is spent on electioneering and 'nursing the constituency'. The wastefulness of democracy is a fact which cannot be easily controverted. There is waste, not only of money, but also of time and opportunity. A recent writer describes democracy as an 'exaggerated committee', and humorously defines a committee as seven men doing in seven days what one man can do in one day. This definition illustrates the general principles of waste involved in democracy. Parliamentary government is slow-moving, for it has to depend upon persuasion and the securing of a majority.

8. Even the moral value of democracy has been seriously questioned by some. These critics say that there is always in democracy a temptation to falsify. A calls B a liar and B pays back the compliment to A by calling him a bigger liar. Issues are to be vulgarised and popularised before they can make an appeal to the people. Questions are not discussed dispassionately. They are discussed in such a manner as to catch votes. There is little or no attachment to truth

or justice as such. The governing consideration is the securing of popular support by the vote.

Bribery and corruption are said to be the common abuses of democracy. In his chapter on 'The Money Power in Politics (*9 : Ch. LXIX*)', Bryce shows that there are several instances of electors, members of legislatures, administrative officials, and even judicial officials succumbing to the temptation of illicit gain. This abuse, however, is on the whole on the decline today.

9. Democracy, it is said, is a process of diseducation, rather than of education. It flatters people. It produces a pretentious proletariat. It hides from people their deficiency. It engenders in them a false sense of equality. Every man thinks that he is as good as any body else, for the governance of his country. It calls for no special effort and training. It lowers standards. It makes people think too well of themselves in literature, science, and art. Appeal is made to mob psychology, and every effort is made to pander to the people. People as a whole are indifferent. if not hostile, to the advancement of education, science, literature and art. They are more apt to run counter to scientific conclusions than are the privileged classes. The civilisation which a democracy produces is said to be 'banal, mediocre or dull'. (Burns)

Besides, the mere fact that literacy is wide-spread in democratic countries does not mean that people there become wise or balanced in their thinking. The present-day tendency is for reading to become more and more a substitute for thinking. Lord Bryce rightly says that a democracy taught only to read, and not also to reflect and judge will not be the better for its ability to read. C. D. Burns writes sarcastically that education is indeed used by some in order to read the betting news and health bulletins in order to hold more strong drink.

10. Several critics have drawn attention to the fact that there is in democracy a 'large and increasing mass of hasty and ill-digested legislation (*54 : 613*)'. The average representative not infrequently feels that the only way in which he can justify his existence in the legislature is to help to place some new law or another on the statute books. He does not particularly care to investigate whether such a law has been passed previously or not, whether it is absolutely necessary and sensible, and whether it will be workable. His chief aim is to add a feather to his cap and appear well before the people who have set him up as their representative. In modern legislatures there is indeed a craze for legislation.

11. There are many instances in democratic countries of local interests tending 'to obscure and to defeat the interests of the State at large (*54 : 164*)'. In the scramble for power and patronage, the general well-being of the State is apt to be brushed aside in order to do some good to a limited number of people. Representatives vie with each other in obtaining whatever they can, irrespective of its effect on the welfare of the country at large in order to curry favour with their electorate. It is no one's business to look after the interest of the public. There is no 'sense of the community', and the consequence is that the unity of the national spirit is put to great strain. A tendency which is becoming more and more marked in some of the Western countries is for organised minorities to subordinate public welfare to their own purposes.

12. One grievous failure of the American democracy, says President Lowell, is the misgovernment of her large cities. The evil seems to be chronic, and as yet no enduring cures have been found.

Lord Bryce sums up the chief faults observable in modern democracies as follows :

(1) 'The power of money to pervert administration or legislation.

(2) 'The tendency to make politics a gainful profession.

(3) 'Extravagance in administration.

(4) 'The abuse of the doctrine of equality and failure to appreciate the value of administrative skill.

(5) 'The undue power of party organisations.

(6) 'The tendency of legislators and political officials to play for votes in the passing of laws and in tolerating breaches of order (*9 : Vol. II, p. 504*).'

5. Evaluation of the Criticisms Against Democracy

Many of the above criticisms undoubtedly contain elements of truth. But for the most part they are mere caricatures. It is interesting to note that some of them mutually cancel each other. Thus, according to some writers, democracy means hero-worship and idolatry, while, according to others, it means insubordination and anarchy. Some say that democracy is given to idealism and worship of abstract theory, while others contend that in a democracy there is no place for sentiments and principles. These mutual contradictions contain their own refutation.

1. If democracy is a bad form of government, we are justified in

democracy is the apathy of the voter, we may say that other forms of government do not show better results. If there are periods of apathy in popular interest in a democracy, there are also periods of intense interest and keen devotion. A non-democratic form of government is sure to win the support of people so long as it confers boons upon them, but the moment it imposes burdens, there is profound discontent.

5. Although some of the present-day critics of democracy decry the principle of representation, they are unable to free their minds of it entirely. No reputable thinker today is prepared to justify unadulterated autocracy. It is instructive to find even the most ardent supporters of dictatorship justify it on the plea that it is truly representative of the people. Thus, Major Yeats-Brown claimed that Fascism was more representative of the people than was modern democracy. His argument was that democracy is not the opposite of dictatorship, but that it is ill-adapted to the difficulties of modern life. Whether we agree with his interpretation or not, the point is that the principle of authority on the basis of representation has become a permanent part of political philosophy today. If we are agreed on this point, the further question concerns the most effective way in which people can be represented. We demur to the point of view which claims that dictatorship is truly representative of the people, especially when we take into account the fact that it stifles criticism and a free expression of opinion.

6. To the charge that democracy necessitates party government and that party government is an unsatisfactory way of dividing opinion, our reply is :

(a) Parties are inevitable, for without them it is impossible to operate a democratic government. Parties bring order out of chaos. They mould and educate public opinion. As Bryce remarks, 'Parties keep a nation's mind alive, as the rise and fall of the sweeping tide freshens the water of long ocean inlets'.

(b) 'Party discipline', to quote the same writer again, 'puts a check on self-seeking and corruption'.

7. To the charge that democracy means diseducation, there is perhaps no satisfactory answer on the basis of facts. Democracy does create pretence and flattery of the masses. Standards are lowered in order to reach the mob. People think too well of themselves in art, science, and literature. While all this is true, we may well ask, what is the way out ? In other forms of government there is even less

opportunity for popular education. Besides, proper humility is not inconceivable in a democracy. The diseducation of the masses can be gradually overcome by instilling into people a spirit of teachableness. Already we see signs in that direction. We concede to the opponents of democracy that there is considerable waste and extravagance in a democracy. But our plea is that this is not a necessary evil. Education of public opinion will go a long way in overcoming it.

8. Alongside of waste and extravagance, bribery and corruption are common in most democracies. But for these, we have to blame the general life of the country and not democracy alone. Lowell is right when he says that we cannot fairly attribute to democracy evils tolerated in the commercial life. 'Right and wrong have always existed and always will. A lack of probity in public life is no new thing'. 'There is certainly less corruption among office holders now than there was in Europe in the eighteenth century, but popular forms of government will hardly be rid of it until a higher standard is exacted on the street, and those who violate it are socially tabooed'.

9. It is almost a fashion today to proclaim the death of democracy. Like many other fashions, it is possible that this fashion has no solid foundation. After experimenting with dictatorship for a while, Spain returned to democracy, although it has once more returned to dictatorship. In countries like England and the United States, where democracy has been developed and where it has functioned successfully for a period there seem to be no serious signs of its abandonment. All that former enthusiasm for dictatorship indicates is that democracy should adjust itself to changing conditions. Andre Maurois, a French writer, says : 'The fact that a country lives under parliamentary rule is no reason why it should refuse an individual leadership for a defined purpose and a fixed period . . . , To adjust democracy would not mean opening the door to dictatorship, but rather keeping dictatorship at arm's length *(53 : 31-2)*.' As pointed out by Dr. A. D. Lindsay : 'A democratic society sure of itself can be indefinitely elastic in its methods. It can, as in a time of crisis, give enormous powers into the hands of its government, in cheerful confidence that, the crisis past, it can take them back *(52 : 17)*.' The way in which Mr. Churchill in England and President Roosevelt in the United States acquired enormous powers in the course of a relatively few years and the way in which their countrymen calmly and confidently acquiesced in such an extension are a sign not of the weakness but of the strength of their democratic faith.

Prof. W. E. Hocking states the matter as follows :

(1) Democracy cannot be any better than the education, the training, and the efficiency of the people. Success in democracy calls for ability to think behind superficial contiguities.

(2) Democracy cannot succeed without truth and true data. It means the disinfection of our news, aiming at truth.

(3) Democracy depends upon the good-will of the masses. To the question whether democracy is possible for the masses, the answer is, is humility possible for them ? and to the question whether humility is possible for the masses, the answer is, is religion possible for them ? Because religion is a perpetual reminder of man's imperfections. In other words, democracy requires a spirit of humility or teachableness on the part of the people, and this in turn requires a religious spirit.

(4) Democracy calls for faith of the leaders in the masses. Every man and leader of men, as he grows old, tends to become cynical. There are many things to disillusion him. If democracy is to succeed, it must base itself not on men as they are, but on men as they can be. This means faith. Democracy can thrive only on an inner current of religion and faith.

A. L. Lowell sums up the conditions of successful democracy in these striking words : 'The duration of any form of government depends upon how far it develops a people qualified to carry it on, and how successfully it brings to front those most fit to lead .... Does democracy tend to produce a people disposed to place the general welfare above partial interest, a people with keen sympathy and absence of jealousy between classes, with the will to bear present ills for future good, with foresight and fortitude and does it select for its representatives and magistrates men who possess these qualities in a high degree ? If it does these things the squalls that arise will not disturb its foundations, and it will stand unshaken though storms may rage in other lands. So far as it does not do this the iron of its feet is mixed with miry clay'.

Among the practical suggestions advanced for improving the machinery of the democratic organisation, the views of the following writers deserve mention :

Lord Lothian says :

(1) That government should be conducted under guarantees of freedom of speech and criticism, and political and economic initiative for the individual ; and

(2) That it should be changeable without violence, at the ultimate decision of an adult electorate.

Andre Maurois suggests 'an individual leadership for a defined purpose and a fixed period' as a check upon dictatorship. Others suggest a strong executive. Lord Eustace Percy claims that the British constitution saves itself by the Monarchical Prime Ministership and that the day when he (the Prime Minister) fails under the domination of a party caucus there will be no alternative to dictatorship'. 'Parliament's first and supreme duty is, therefore, to make strong Prime Ministers. Their freedom is its freedom ; their strength its strength'.

Other suggestions made by Lord Percy are :

(1) Parliament should concern itself with broad questions of policy and not lose itself in petty details. It should deal with taxation and expenditure as broad issues of policy, and voice grievances arising out of the misdirection of expenditure and the unfair incidence of taxes. 'It should abolish the absurd custom of procedure which precludes reference in almost all ordinary debates, to any questions involving legislation'.

(2) Parliament should take the initiative in fomulating bills. It should not depend too largely on overdriven government departments for formulating legislative proposals. It should constitute a series of committees of the House for this purpose. These committees should re-examine the whole field of the relations between government, central and local, and the individual.

(3) Other committees of Parliament should be constituted 'to watch the administrative action of particular departments, to examine departmental orders and regulations before issue, to investigate individual complaints and to make representation to ministers.'

(4) An economic council should be constituted by Crown nomination, as nearly as possible representative, not of economic opinion, but of economic power. Government and Parliament should use this council in their preparat

legislation. It should further examine the whole field of the relation between government and industry.

(5) The Crown should be given the freedom to create life peers and the House of Lords should have its full share of the task of replanning legislation.

Writing on 'Parliament as it Should Be' Sir Stafford Cripps claims that the three attributes of democracy are :

(1) That the people must have a free and unfettered choice of their representatives, with a right of recall at stated periods;

(2) That the people must signify their choice of the policy that they desire to be carried out ;

(3) That representatives must be able to carry through the desired policy without undue delay and without outside interference from any particular interest and persons.

To give effect to these practical attributes of democracy, Sir Stafford Cripps recommends :

(1) The abolition of the leisurely methods of nineteenth century law-making ;

(2) The House of Commons taking a bold line when it has the support of the country behind it and effectively controlling the manner and *tempo* of the nation's progress, not being brow-beaten by a non-democratic Second Chamber ; and

(3) The formation of functional committees to supervise the legislative and administrative activities of the ministers.

H. Sidebotham believes that the Parliamentary system may be consistent with the dictatorship of committees.

Lord Bryce concludes his discussion on the relative merits and demerits of democracy in the following terms :

If the optimists overvalued the moral influence of democracy, the pessimists undervalued its practical aptitudes. It has reproduced most of the evils which have belonged to other forms of government, though in different forms, and the few it has added are less serious than those evils of the older governments which it has escaped.

(1) It has maintained public order, while securing the liberty of the individual citizen.

(2) It has given a civil administration as efficient as other forms of government have provided.

(3) Its legislation has been more generally directed to the welfare of the poorer classes than has been that of other governments.

(4) It has not been inconstant or ungrateful.
(5) It has not weakened patriotism or courage.
(6) It has been often wasteful and usually extravagant.
(7) It has not produced general contentment in each nation.
(8) It has done little to improve international relations and ensure peace, has not diminished class selfishness, has not fostered a cosmopolitan humanitarianism nor mitigated the dislike of men of a different colour.
(9) It has not extinguished corruption and the malign influences wealth can exert upon government.
(10) It has not removed the fear of revolutions.
(11) It has not enlisted in the service of the State a sufficient number of the most honest and capable citizens.
(12) Nevertheless, taken all in all, it has given better practical results than either the Rule of One Man, or the Rule of a Class, for it has at least extinguished many of the evils by which they were defaced.

Our conclusion may well be that of Edward Carpenter : 'O, dis respectable democracy, I love you'. In the words of T. V. Smith : ' one cannot gain heaven, it is foolish to despair if there still remain in one's hands the means of avoiding hell'.

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